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ABSTRACT

This revised manual presents updated guidelines and regulations regarding student suspensions in New York City public schools. The manual is divided into four main sections: principal's suspension; superintendent's suspension; search and seizure; and suspension of special education students. The manual is specifically designed to assist the principal and superintendent in providing guidance in such areas as suspension procedures, presuspension investigation, important phases in conducting suspension hearings, weapons-violation suspension, records disposition, the appeals process, and readmission. Two thirds of the manual is composed of an appendix containing New York City Board of Education Citywide Standards of Conduct and Uniform Disciplinary Measures. (GLR)

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IN NEW YORK CITY PUBLIC SCHOOLS

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INTRODUCTION

In New York State, a person over five and under twenty-one years of age who has not received a high school diploma is entitled to a free public education. New York State Education Law Section 3202(1). Minors between the ages of six and sixteen are required to attend school. Section 3205(1)(a). However, under state law, a student who is insubordinate or disorderly, or whose conduct otherwise endangers the safety, morals, health or welfare of others may be suspended from required instruction. Section 3214(3)(a)(1).

Students may not be suspended from school without due process of law. The Fourteenth Amendment of the United States Constitution requires "that a state shall not deprive a person of life, liberty or property without due process of law." The United States Supreme Court held that when students are suspended, they are deprived of their property and liberty interests and are therefore entitled to due process. Goss v. Lopez, 419 U.S. 565 (1975). The Court ruled that educational benefits are a legitimate property interest because they are benefits conferred by the state. Because of its impact on a student's good name, honor, reputation and integrity, any notation of misconduct impinges on a student's liberty interest. The Court found that for short-term suspensions, due process requires that students receive notice of the charges against them as well as an opportunity to defend themselves in an orderly proceeding.

Grounds for suspension, the authority to suspend, the length of the suspension, requirements for notification and students' rights in the hearing process are defined in state and local law. The Regulations of the Chancellor govern the suspension of students in the City of New York. The regulations derive their authority from state law. However, they are more specific and narrow than state law. For example, Chancellor's Regulations state that the principal shall have the power to suspend a student from participation in regular school activity when s/he determines that the overt behavior of that student prevents the orderly operation of the class or other activities or presents a clear and present danger of physical injury to school personnel or students. Additionally, students in New York City public schools may not be suspended for truancy, poor academic behavior or smoking cigarettes.

PRE-SUSPENSION CONFERENCES

According to the Chancellor's Regulations A-440(II) and A-441(II), before a suspension is considered, the school should explore all possible alternatives. A pre-suspension conference should be held for the purpose of providing an opportunity for parents, teachers and other personnel to plan educationally for the student. Parents mey wish to request such a conference if they are aware of potential or actual problems their child is having in school. This conference is a guidance procedure and is an alternative to suspension. It may not be used to determine whether or not a student should be suspended. However, the principal has the power to suspend a student from school when s/he has determined that the student's conduct poses a continuing danger or threat.

PRINCIPAL'S SUSPENSIONS

Principal's suspensions of elementary and junior high school students are governed by Chancellor's Regulation A-440. Principal's suspensions of high school students are governed by Chancellor's Regulation A-441. Suspensions of special education students are governed by Chancellor's Regulation A-445.

Only a school principal has the authority to suspend a student from school when s/he has determined that the overt behavior of that student prevents the orderly operation of class or other activities or presents a clear and present danger to school personnel or students. A principal can only suspend a pupil in grades K-3 with the superintendent's authorization. A vice-principal or assistant principal does not have the authority to suspend a student from school. Guidance counselors and deans are not authorized to suspend students. For example, if a dean tells a student that s/he is suspended and should not return to school for five days, that is an improper suspension. Only the principal (or designated acting principal in the absence of the principal) has the authority to suspend a student from school.

There must be a preliminary investigation of the charges before the student is suspended during which the principal must inform the student of the alleged charges against him or her. If the student denies the charges, the principal must explain the evidence to the student and allow the student an opportunity to explain his/her side of the event, if it is feasible to do so.

In addition, Chancellor's Regulation A-412 requires that a principal or his representative obtain handwritten statements of at least two witnesses, as well as a signed statement from the parties involved indicating the time, date and place of the incident.

A principal's suspension may not exceed five school days under any circumstances. A student may not be transferred after a principal's suspension unless a parent specifically requests a transfer. A principal's suspension may not be followed by a superintendent's suspension for the same incident. No student may be suspended by a principal twice consecutively or more than twice in the same school year.

Parents must be informed by telephone or telegram immediately when their child has been suspended. The student, regardless of his or her age, is to remain in school under supervision until the parent comes to pick up the student or until the end of the school day. The school must also inform parents on the day of the suspension by regular and certified mail that the student has been suspended, of the specific reason for the suspension, and of their right to a conference with the principal. (See page 9 for further explanation regarding specificity of charges.) The letters must be signed by the principal.

The suspension confernce should be scheduled as soon as possible. Often, the conference is scheduled for the fifth day of the suspension. Parents may try to schedule the conference sooner. An earlier conference may enhance the possibility of returning the student to school as soon as possible. A principal who recognizes the parent's concern and involvement in the child's education may be more willing to reinstate the student sooner.

Principal's Suspension Conferences

For a principal's suspension, the hearing is an informal conference to determine the accuracy of the charges and to plan educationally for the student. The school principal must conduct the conference and may not delegate that responsibiity. The principal must explain the basis for the decision to suspend the student and allow the parent and student to explain their side. Under N.Y. Educ. Law Section 3214(1)(e), parents may question complaining witnesses. A complaining witness is a person who has seen, heard or otherwise observed the alleged conduct of the student and who will testify as to those observations. Should the parent's right to cross-examine witnesses be denied, the parent should appeal the suspension. According to Chancellor's Regulations A-440(II)(A)(9) and (11) and A-441(II)(A)(10)(e), a parent also has the right to present additional information and have witnesses present to testify on behalf of the student.

Parents are entitled to the assistance of up to two additional persons. Under Chancellor's Regulations A-440(III)(A)(11)(e) and A-441(II)(A)(10)(e), they may be attorneys or advocates and may participate as "advisors". Advisors may ask questions or make comments during the conference. The conference is not intended to be an adversarial proceeding but rather a guidance mechanism and participants should not become adversarial. Nevertheless, parents and advocates should refer to relevant law and regulations in support of their position, where appropriate.

If the parent and student are not present on the scheduled date of the conference, the principal must state that fact on the record, describe the efforts of the school to ensure their presence and proceed with the conference. Parents must be notified in writing of any decisions reached at the conference.

The principal must prepare a written summary of the conference, which will be maintained by the school. Parents have a right to review this summary.

Alternative Instruction During Principal's Suspension

Under N.Y. Educ. Law Section 3214(e), alternative education must be provided for students of compulsory education age who have been suspended from school. In Turner v. Kowalski, 374 N.Y.S.2d 133 (1975), the court held that alternative education must be provided, even for students who have been suspended for five days or less. At a minimum, homework should be provided during the suspension period. Students should be permitted to take any city or state exam for which there is no make-up. Students should be allowed to take or make up any exam that may significantly affect their grades. However, "...alternate education need not match in every respect the instructional program previously offered to a pupil." Matter of Malpica, 20 Ed. Dept. Rep. 365 (1981)

Appeal of Principal's Suspension

Parents and advocates who wish to appeal a suspension decision following their conference with the principal must do so in writing within ten days of the conference. The written statement must include the grounds for appeal and the kind of relief requested, such as having the notation of the incident immediately expunged from the student's record.

An appeal of a principal's suspension of a high school student must be sent to the appropriate high school borough superintendent. An appeal of an elementary or junior high school student must be sent to the community school district superintendent. Appeals must be filed within 10 school days. The principal then has 5 days to submit a written statement of the grounds for his decision.

Under the Bylaws of the Board of Education (Article 7, Section 7.3), the community superintendent or high school supervising assistant superintendent must make a decision within five school days following the filing of the principal's statement.

If the community superintendent does not respond or if the decision is unsatisfactory, the next appeal would be to the Community School Board and, finally, to the Board of Education. If the high school supervising assistant superintendent does not respond or if the decision is unsatisfactory, the next appeal must be directed to the Chancellor and ultimately to the Board of Education. These appeals must be in writing and again must include grounds for appeal and the relief requested. They must be filed within twenty school days following the unsatisfactory decision. A decision must be made within fifteen working days following the completed filing of the appeal.

Checklist for Principal's Suspensions

- Was there a pre-suspension conference?
- Was there a preliminary investigation of the charges before the suspension?
  - Was the student given an opportunity to tell his/her side of the story?
  - Were handwritten statements obtained from at least two witnesses?
  - Were signed statements obtained from the parties involved in the incident?
- Who suspended the student?
- Was the student allowed to remain in school until the end of the school day or until parents came to pick up the student?
- Were parents notified by telephone or telegram at the time student was suspended?
- Were parents notified by certified and regular mail?
- Did the letter include the specific reasons for the suspension?
- Did the letter inform the parent of the right to a conference with the principal?
- Was a conference scheduled within five school days of the suspension?
- Did the principal attend the conference?
- Were parents allowed to bring up to two additional persons for assistance?
- Was homework provided to the student during the suspension?
- Was the student allowed to take exams, that could significantly affect his/her grades, during the suspension?

If the answer to any of the above questions is no, the school has not followed the procedures established by law to regulate the suspension of students from school. Suspensions may be appealed because of procedural violations.

Different procedures have varying significance within the due process requirements for suspensions. For example, the denial of a conference with the principal would be a greater violation than a conference held on the sixth day following the suspension. Review procedural violations to determine their impact on the fairness of the suspension before preparing an appeal. Significant violations stand a better chance of persuading the Board to reverse an unfavorable decision.

The school is required to prove the charges against the student with direct evidence. If the school has not done so to your satisfaction, this may be a basis for appeal. A challenge of procedural violations, where substantive issues are also being appealed, has the strongest chance of prevailing.

SUPERINTENDENT'S SUSPENSIONS

A superintendent's suspension may exceed five days. As the deprivation of the student's rights is greater, the requirements of due process are more stringent. Superintendent's suspensions of elementary and junior high school students are governed by Chancellor's Regulation A-440. Superintendent's suspensions of high school students are governed by Chancellor's Regulation A-441.

Superintendent's Suspensions of Elementary and Junior High School Students

A superintendent's suspension of a high school student requires extensive due process procedures. Most of these procedures were recently extended to elementary and junior high school students as well, and are codified in Chancellor's Regulations A-440. They include:

1. The right to have a preliminary or "pre-suspension investigation", discussed in detail on page 8.

2. The right to notice, by both regular and certified mail, of:

   - the student's suspension;
   - the specific reasons for the suspension, including the date, time and place of the behavior giving rise to the suspension;
   - the fact that the student should not attend school during the suspension period;
   - the date, time and place of a hearing, to be held no more than five school days from the date of the

suspension;

- the student's right to reinstatement, or transfer to an equivalent program with the parent's consent, on the sixth school day following the suspension if the hearing was not originally scheduled to be held within five school days, or if the hearing was scheduled within five school days but the school requested a postponement;
- the parent's right to request an adjournment or postponement of the hearing date, but that the student will remain out of school until the new hearing date;
- the parent's right to obtain a copy of all the student's school records, including all records related to the suspension, and the fact that these records can be used at the suspension hearing;
- the parent's right to be notified of and to challenge derogatory entries in the student's records, pursuant to Chancellor's Regulation A-820;
- the right to, and the advisability of, representation by an advisor or counsel, and a list of community agencies offering free legal assistance (it is up to the parent to seek out counsel, if s/he so desires -- the school system will not provide the student with counsel);
- the right to subpoena witnesses;
- the right to question witnesses, and present witnesses and documentary evidence on the student's behalf;
- the range of possible dispositions if the charges are upheld;
- the right to receive classwork and homework assignments during the days of suspension prior to the hearing;
- the right to obtain a full written description of a suspended student's rights;
- the right to obtain a copy of the record (i.e., a tape or typed transcript) of the hearing;
- the fact that the superintendent will issue a full written decision within five days of the hearing; and
- the right to appeal the suspension decision and a copy and an explanation of the appeal procedures.

Many of these rights will be discussed in more detail below.

Superintendent's Suspensions of High School Students

As a result of a lawsuit brought on behalf of high school students by Advocates for Children and other advocacy groups, plaintiffs and the Board of Education came to an agreement, known as the *Boe* Stipulation. The *Boe* Stipulation requires detailed due process procedures for the suspension of high school students. Many of those requirements are codified in Chancellor's Regulation A-441. They *include all of the rights listed above* for elementary and junior high school students, with three important distinctions.

1. The letter of notice the high school student receives by both regular and certified mail must include a non-binding list of witnesses who are expected to testify on behalf of the school.

2. The letter of notice will also inform the student that s/he will receive alternate education at an "outreach center" until the scheduled hearing date, and will include the location of the center to which s/he has been assigned for this period.

3. If the parent intends to be represented by an attorney, advocate, or advisor at the hearing, the parent must notify the hearing office of this fact at least 24 hours in advance of the hearing date. The failure to notify the hearing office may result in an adjournment against the student, which means that the school does not need to go forward with the scheduled hearing, that a new hearing date will be scheduled and that the student will remain out of school until the new hearing date.

Preliminary/Pre-suspension Investigation

When a principal believes that a student is so disruptive as to prevent the orderly operation of classes or other school activities or presents a clear and present danger of physical injury to other students, the principal shall refer such cases to the community superintendent (for elementary and junior high students), to the regional superintendent (for high school students), or to the Executive Director of the Division of Special Education (for all special education students). The principal must give a brief summary of the student's behavior.

Prior to requesting a superintendent's suspension, the principal must conduct a preliminary investigation. The student must be removed from class and informed of his/her alleged misconduct by the principal. If the student denies the charges, the principal must explain the evidence to the student and allow the student to explain his/her side of the story. According to

Chancellor's Regulation A-412(IV)(E), when an incident occurs in school, the principal or his/her representative must obtain handwritten statements from at least two witnesses, as well as signed statements from the parties involved, as to the specific circumstances surrounding the incident. Chancellor's Regulations A-440(II)(B)(5)(a) and A-441(II)(B)(5)(a) provide that the principal or his/her designee must interview and take written statements from any witness to the incident. Failure to comply with this regulation is tantamount to failure to conduct an adequate investigation into the incident. See Matter of Ismael R., Board of Education Decision (6/6/90)(suspension reversed where school failed to conduct an adequate investigation); see also Matter of Michael R., Board of Education Decision (8/23/89) (sustaining appeal in part because witness statements were not taken from the nine students who observed the alleged incident). A superintendent's suspension may not be authorized unless the superintendent has confirmed the preliminary investigation by the principal or has been given an explanation of why it was not feasible.

If a superintendent's suspension has been authorized, the student must remain in school under supervision until the end of the school day or until parents come to pick up the student. On the day of the suspension, the parent must be notified by telephone or telegram. If the student has been arrested, the principal must inform the parents immediately. The principal should send a member of the school staff to accompany the student to the precinct with the arresting officer, of if that is not possible, the staff member should follow the student to the place s/he is taken. The staff member should stay with the student until the parent arrives at the precinct or for a reasonable period of time.

Notice

Whether the student has been arrested or not, the superintendent must inform parents by both regular and certified mail that the student has been suspended, the specific reasons for the suspension and that the student may not return to school during the suspension period. The charges must be sufficiently specific to advise the student of the incident which gave rise to the suspension. Matter of Dennis, 19 Ed. Dept. Rep. 235 (1979). Legally sufficient notice must include the time, date and place of the incident. Matter of Rose, 10 Ed. Dept. Rep. 4 (1970). Vague allegations such as "serious violation of school regulations and disruption of school activities" should be challenged at the hearing on vagueness grounds. See e.g., Matter of Robert, Board of Education Decision (5/28/70) (charges dismissed where notice deficient because it lacked specificity). The letter to the parent must include the date, time and place of the suspension hearing and the alternative instruction site the student must attend until the hearing date. The hearing must be scheduled within five school days after the date of the suspension. The letter must also inform parents of their right to, and the advisability of, representation by an advisor or attorney and the right to question complaining witnesses and present witnesses and evidence on behalf of the student. See Chancellor's Regulations A-440(II)(B)(11) and A-441(II)(B)(11) for further notice requirements.

A list of community agencies offering free legal assistance, a copy of "Rights and Responsibilities of High School Students" and a copy of appeal procedures must also be enclosed with the letter from the superintendent.

Scheduling the Superintendent's Suspension Hearing

If a hearing is not scheduled or held within five days of the suspension, on the sixth day, the student is entitled to reinstatement or, with parental consent, to placement in an equivalent program. However, if parents have requested an extension for a hearing originally scheduled within five days following the suspension, the student may continue to be suspended pending the hearing. If parents request an extension, a new hearing must be scheduled within five school days of the date of adjournment, unless the parent requests a longer period. If after "appropriate notice" the parent and student do not appear at the hearing, the superintendent has the option of holding the hearing without them, and informing them in writing of the decisions reached at the hearing.

Access to and Use of Records

Access to students' records is authorized under Chancellor's Regulation A-820 (VI) (A) and (B).

Parents or advocates should contact the school and secure copies of the student's records prior to the date of the suspension hearing. Persons other than parents must have written consent from the parents to have access to the records.

Parents should specifically request any written statements related to the incident for which the student has been suspended, as well as the student's permanent and guidance records. For example, if the student was involved in a fight with a security guard, the guard's statement should be requested. Parents should also request a copy of the incident report.

At the hearing there will be an opportunity to review records relating to the incident which the school intends to submit for fact finding purposes. Review these records carefully and compare them with the records the parent obtained prior to the hearing date. This is important because it is impermissible for the school to submit documents that were not provided to the parent at least by the day before the hearing.

For superintendent's suspension hearings, the school will prepare three packages of the student's records: one each for the parent, the hearing officer and the superintendent. These files include a record of the student's prior incidents at school, teachers' and guidance counselors' comments, attendance and lateness records, test scores and grades. The dean or other appropriate school official will bring the records to the hearing, although parents should request and review them in advance. These records may only be used for dispositional purposes and may not be used to determine the validity of the charges against the student. For example, based on the student's record, the hearing officer may recommend transfer to another school as a disposition. The records included in the dispositional file should not include any written statements or incident reports regarding the incident for which the student has been suspended. Therefore, upon receipt of records from the school, parents should ask, "Is that all there is?" This is important because if the parents ask for the records in advance, the school may only introduce any written statements at the hearing that they have already given to the parents.

At the hearing, there will be an opportunity to inspect the records the school is submitting for dispositional purposes. It is important to review these records carefully prior to the hearing. Objections should be made if the school attempts to submit any records pertaining to the suspension during the dispositional portion of the hearing. Objections should also be made if the school submits records with derogatory, inaccurate or misleading notations of which the parents were previously unaware. Chancellor's Regulation A-820 (VII) (C) and (E) specifies that a derogatory notation must be entered onto the record within five days of the time the school authorities became aware of the incident and parents must be informed in writing of such an entry within fifteen school days.

Subpoenaing Witnesses

Under N.Y. Educ. Law Section 3214(3)(c), the hearing officer is authorized to compel the attendance of witnesses. Therefore, when parents or their representatives receive a witness' written statement with the student's records, and they would like to question the witness, or anyone else involved, they should ask the hearing officer to subpoena the witness. The representative will receive mailgram confirmation of the requested subpoenas, but the representative should always attempt to contact the witnesses before the hearing. This is a useful opportunity not only to question the witnesses, but also, if they are students, to reassure them and their parents that they are not in any trouble. Without personal contact they are unlikely to appear at the hearing. School officials must serve subpoenas to students and employees of the Board of Education. Parents must serve subpoenas to any other person they wish to testify on behalf of the student.

Recent changes in the Chancellor's Regulations have given the hearing officer expanded discretion concerning the subpoenaing of witnesses. If a witness who is a Board of Education employee has been subpoenaed and has not complied with the subpoena, a short recess should be called. During this recess, the hearing officer will determine whether the employee's presence can be obtained. If it cannot, the parent may request an adjournment until the witness' presence can be obtained. If this adjournment is longer than two days, the student must be reinstated. However, the hearing officer has the important option of determining whether the witness' testimony would be irrelevant or immaterial. If the hearing officer decides that this is the case, then s/he has the option of denying the adjournment. The hearing officer has the obligation of stating on the record the reasons that such a denial occurred. (CR A-441 II.B.13.i. (p.19-20)). The parent or advocate should state on the record that they object to the hearing officer's ruling because it deprives the student of his/her right to present a full defense.

Stipulating to the Charges

There may be circumstances in which it will be to the student's advantage not to contest the charges against him or her. Hearing officers and school personnel refer to this procedure both as "stipulating to the charge" and as "pleading no contest." In the case of a suspension based on a student's possession of a box cutter, for example, if the school has to go to the trouble of preparing for and participating in a hearing, they may resist reinstating the student. However, the parent may try to exchange a stipulation for a guarantee of reinstatement. The hearing officer must explain the consequences of stipulating to the charges, including the waiver of rights to due process such as presenting and cross-examining witnesses. A stipulation may be offered over the phone. A preference to stipulate should come from the parents and may not be initiated by the hearing officer.

The superintendent must make a decision within two days of the stipulation. Written notice of the decision must be posted within five working days. If the decision is unsatisfactory, for example, if the superintendent refuses to seal and expunge the records of the suspension or if the student is transferred to a school that s/he does not wish to attend, the parent may withdraw the stipulation and proceed with a hearing. The parent has three days from the date of the decision letter to request that the hearing officer reopen the hearing. The hearing must be scheduled within five school days of the parents' request. Of course, parents should not stipulate to the charges if the student did not do what s/he was charged with. If the student is facing concurrent criminal or family court charges, the parent should consult the student's defense counsel prior to stipulation. If it is determined that a stipulation would not harm the student, the parent should specify that the stipulation is not an admission of the guilt of the student but rather a decision not to contest the charges.

Superintendent's Suspension Hearing

A. Fact-Finding Phase

The superintendent's suspension hearing is a formal procedure. It will be tape recorded. the school and parents may present witnesses, question witnesses and present statements. The school will present their case first. The hearing cannot be conducted without a witness able to provide direct evidence of the charges. Direct evidence is testimony by those who have actual, first-hand knowledge of the incident. If the complaining witness is not present, the school will probably wish to postpone the hearing until the complaining witness can appear. Whenever the school requests a postponement, the student is entitled to return to school until the next hearing date. However, if the complaining witness refuses to appear, the representative should move to have the suspension dismissed due to insufficient evidence. Chancellor's Regulation A-441 (II)(B)(13)(g) and A-440 (II)(B)(15)(a).

School officials are responsible for proving by direct or circumstantial evidence the student's involvement in the incident charged. An example of direct evidence may be the testimony of a security guard who saw a student smoking marijuana. Circumstantial evidence is evidence of facts which are inferred or which flow from direct evidence. For example, where a student is charged with writing graffiti on the wall in black ink and the student was in possession of a black magic marker, testimony as to the student's possession of the magic marker is circumstantial evidence. Testimony that the student was present in an area which smelled or marijuana may infer the student's use of marijuana at that time and would be circumstantial evidence.

No finding may be based exclusively on hearsay evidence, although both oral and written hearsay may be introduced at the hearing. Oral hearsay is testimony made by a person who was not present at the time of the incident in question. Written hearsay is a written statement entered into evidence at the hearing without the presence of the person who wrote it. Written statements from witnesses may be admitted at the hearing as hearsay, if they were provided to parents upon request of the student's records. However, the suspended student's statement is not considered hearsay and can be used as direct evidence against him. The validity of hearsay and other evidence may be determined through a careful cross-examination of the witness. The hearing officer may not allow the school to submit any information regarding the student's past record. Only information regarding the specific incident for which the student has been suspended may be introduced by the school at the hearing.

At the hearing, the hearing officer may question witnesses even if the school is represented by a staff advisor. After the school presents their side, the parents may present witnesses and evidence on behalf of the student. If an employee of the Board of Education does not appear at the hearing in compliance with a subpoena, the hearing officer should call a brief recess to obtain that person's presence within a short time that day if the witness is material to the case. If the person cannot be brought to the hearing on that day, parents may request an adjournment, which may not exceed two days unless the student is reinstated. The hearing officer may deny an adjournment upon a determination that the missing witnesses' testimony would be irrelevant or immaterial. The parent or advocate should object stating that the student is being denied his/her right to present a full defense. If the hearing is held without the missing witness and the suspension is upheld, the hearing officer must advise the parent that when the witness is available, the hearing may be reopened and the witness recalled to testify.

If the student has also been arrested, advocates must exercise additional care to protect the student's rights as a criminal suspect. Any testimony given at the suspension hearing may be used against the student in criminal or juvenile delinquency proceedings. It is usually advisable for the student to exercise his right to remain silent and not testify so that he does not incriminate himself. Therefore, it is strongly recommended that the parent discuss the case with the student's criminal defense lawyer before the suspension hearing. In cases where the charges are particularly serious it is recommended that the criminal defense lawyer represent the student at the suspension hearing.

Although testimony from the student may not be desirable, testimony from other witnesses may not be as risky. In fact, it may be useful for the defense attorney for purposes of discovery; for example, the defense attorney may be able to anticipate the prosecutor's case in the criminal proceeding through an analysis of the information revealed in witnesses' testimony at the suspension hearing.

Although the school may not submit information regarding the student's past record, parents may introduce the student's prior record if they feel it would be beneficial. It is the responsibility of the school to prove every element of the charges against the student. The burden of proof is substantial and competent evidence, which means that the school must present evidence which on its face would be sufficient to find that the student committed the alleged act of misbehavior.

B. Dispositional Phase

Guidance concerns should be raised at the dispositional phase of the hearing. For example, if the student has been missing work in school, arrange for the student to make up the work. If the student is unhappy in the school and desires a transfer, inform the hearing officer. Tell the hearing officer where the student wants to go and the reasons for the request. If the charges are dismissed, the hearing officer does not have to transfer the student but may do so in consideration of the circumstances, particularly if the student has been doing poorly in school or has a poor anecdotal record. If the suspension is upheld, but the case had merit, the hearing officer may also be inclined to recommend the student's requested transfer. This is also the appropriate time for you to introduce documents, such as character references; letters of support from teachers, employers, clergy, etc.; any awards the student may have received; and/or information about the student's plans for the future (e.g., employment, college, enlistment in the military).

The hearing officer must prepare a written statement regarding the findings of fact and make a recommendation based on those facts. The student's anecdotal record of discipline, teachers' comments, absences and latenesses may not be used in a determination of the student's guilt. However, following the hearing, the anecdotal record may be used in a determination of the length and severity of the suspension. The school may not include any witnesses' statements that were not introduced at the hearing with the student's records following the hearing.

Alternative Instruction Prior to the Hearing

Students who have been suspended from school are entitled to receive homework and the opportunity to take or make up state and city exams or any exam which may significantly affect their grades. In addition, students of all ages should be assigned to an alternative education site. No student should suffer academic penalties as a result of suspension. If provisions were not made for alternative instruction in the period between the date of suspension and the hearing, this should be raised on the record at the hearing.

Weapons Suspension

A superintendent's suspension is required for any student in possession of a weapon in school. See Chancellor's Regulations A-440 and A-441. There are two categories of weapons as defined by these regulations. The first includes weapons proscribed by the New York Penal Code: firearms (including pistols, handguns, silencers, and electronic darts and stun guns), shotguns, rifles, machine guns, switchblade knives, gravity knives, pilum ballistic knives, cane swords, billy clubs, black jacks, bludgeons, chukka sticks, metal knuckles, sand bags, sand clubs, sling shots, explosives, stilettos, dirks, daggers, razors and other dangerous knives, air guns, spring guns, BB guns, and martial art objects, including kung fu stars, ninja stars, nin chucks and shirkens. Possession of any of these weapons will result in an arrest as well as an automatic superintendent's suspension.

The second category of weapons includes acid or other dangerous chemicals, imitation guns, loaded or blank cartridges or ammunition, or any deadly, dangerous or sharp-pointed instruments which can be used as weapons. Possession of any of these items is forbidden. Under the regulation, when there are indications that the student in possession of the article had intentions of using it to inflict physical or mental harm, the principal must request a superintendent's suspension and summon the police to arrest the student. It is the responsibility of the school to show that the student had intended to use the article to inflict harm upon another person. Intent can be shown if they can prove that the student threatened, attempted to use or, indeed, used the article as a weapon. In most cases, students in possession of articles in the second category should not be suspended unless the school can show the students' intent to use the article to inflict harm.

In a case where a student was in possession of an item included in the second category, nail clippers with small penknives attached, and there was no indication of any intent to inflict harm with the item, the suspension was dismissed. The Chancellor held that the article had a legitimate, non-belligerent use and that the suspension was not warranted. Matter of Ronald G., Chancellor's Decision, 6/3/83. Similarly, in a case where a student was in possession of a toy gun, and there was no indication of any intent to inflict physical or mental harm, the Chancellor dismissed the charges. Matter of Jeremy P., Chancellor's Decision, 9/12/91.

The procedures for weapons suspension hearings are basically the same as for all superintendent's suspensions. Prior to authorization of the suspension, the principal must conduct a preliminary investigation, inform the student of the charges, explain the evidence and provide the student an opportunity to explain his/her side of the story, unless it is not possible to do so. Furthermore, in accordance with Chancellor's Regulation A-412, the principal or representative of the principal is required to secure written statements from at least two witnesses to the incident, as well as signed statements from the parties involved as to the specific circumstances around the incident.

If the police take custody of the weapon, the school must present a voucher form at the hearing proving that the police have the weapon and a xerox copy of the weapon. In all other cases, the Bureau of School Safety retains custody of the weapon and must bring it to the hearing. See Chancellor's Regulation A-412(III). Parents should object to the introduction of a xerox copy if the school admits that they did not give the weapon to the police.

Dispositions

On May 31, 1991, Chancellor's Regulations A-440 and A-441 were promulgated, outlining new dispositional options for regular education students. Special education student suspensions continue to be governed by Chancellor's Regulation A-445. The dispositions listed below are those authorized by the regulations.

If the charges are dismissed, the student shall be reinstated immediately, unless the parent requests a transfer. However, the superintendent is not obliged to grant such a transfer. All notation of the suspension will be expunged from the record immediately.

I. According to Chancellor's Regulations A-440 and A-441, depending upon the student's age, the range of penalties for infractions may include:

* calendar-year suspension;
* continued suspension for a fixed period of 6 to 30 school days (i.e., up to six weeks of school), followed by either reinstatement or transfer;
* transfer to another school;
* transfer to a non-diploma-bound program or part-time program (if the student is age seventeen or over);
* reinstatement to the student's same school; and/or
* temporary or permanent notation of the suspension on the student's records.

In determining the disposition to be imposed, consideration must be given to the student's prior record, the circumstances giving rise to the incident, and the student's age and maturity.

II. If the charges are sustained for any of the following behaviors:

1. possessing any Category I weapon, as defined in Chancellor's Regulations A-440 and A-441;

2. using any weapon, as defined in Chancellor's Regulations A-440 and A-441 Categories I and II, to inflict or to attempt to inflict injury;

3. using force against or inflicting serious injury upon school personnel;

4. using extreme force against or inflicting injury upon students or others;

5. engaging in behavior which creates a substantial risk or results in injury (e.g., arson or riot);

6. selling or distributing illegal drugs or controlled substances;

7. possessing or using illegal drugs or alcohol;

8. possessing or using controlled substances without appropriate authorization.

The maximum penalty a student in grades nine through twelve faces is suspension for one calendar year. The maximum penalty a student faces in grades four through eight is continued suspension for a fixed period of 6 to 30 school days (up to six weeks of school). Note: The maximum penalty should not be automatically imposed. Depending upon the student's prior record, the surrounding circumstances and the student's age and maturity, one of the lesser penalties listed above may be appropriate.

Referral to Special Education

A disposition may include a referral to special education. For example, the superintendent may decide to continue a student's suspension pending an evaluation by the Committee on Special Education (CSE). If parents object to an evaluation by the CSE but desire reinstatement, they should immediately request an emergency stay from the Chancellor. (See more on emergency stays, below.) If parents agree to an evaluation, they should ask the superintendent who decided the case to expedite the evaluation in order to determine the educational needs of the student as soon as possible. Contact the CSE as well to ask for an expedited evaluation. Remind them that the student is losing valuable time from school. If a recommendation for special education is made by the CSE, and the parents agree that it is a proper referral, the student should be placed immediately to avoid any further interruption of his/her education. If the CSE has determined that the student is not handicapped, the parent should call the regional superintendent to inform him/her that the evaluations indicate that the student does not have a handicapping condition. If the incident was serious, however, it appears that the student may continue to be suspended. However, the regulations do not specifically address this issue.

Records Disposition

The superintendent will also make a disposition regarding the student's records. When the charges are dismissed, all records relating to the suspension will be immediately expunged. If the charges are sustained, the superintendent will decide whether the records regarding the suspension will be sealed (kept separately from the rest of the school records) and/or expunged upon graduation or upon leaving the NYC public school system. A "seal and expunge" is usually contingent on the student not getting suspended subsequently for another incident. The superintendent may also decide that the suspension will be permanently noted on the student's record.

Alternative Instruction During Continued Suspension

Under N.Y. Educ. Law Section 3214(3)(e) alternative education must be provided to students of compulsory education age. In the case of children suspended pursuant to Chancellor's Regulation A-440, no continued suspension should be authorized without the availability of and provision for alternative instruction. During a 5-day principal's suspension, or during the period before the superintendent's suspension hearing, such alternative instruction consists of having all homework and classwork sent to his/her home.

However, should the superintendent's suspension hearing result in the student being given a disposition of a continued suspension, in cases of students in grades 4 to 8 up to 30 school days, or in the case of students in grade 9 up to a calendar year, this suspension cannot be authorized without the availability of and provision of alternative instruction at an alternative instruction site.

In the case of high school students suspended pursuant to Chancellor's Regulation A-441, alternative instruction means that they will be assigned to a Borough Outreach Center, pending their suspension hearing. High school students placed on continued suspension for a fixed period of 6 to 30 school days will remain at the Outreach Center for the duration of their suspension. High school students placed on calendar year suspension will attend a guidance conference with the superintendent's designee to determine the appropriate alternative education site for the student to attend for the duration of the suspension.

The provision of alternative education becomes most important in cases where students have been placed on calendar year suspension or continued suspension for a fixed period of 6 to 30 school days. A suspended student is entitled to alternative instruction which is the substantial equivalent of his regular classroom work. It is the opinion of Advocates for Children that Borough Outreach Centers do not meet the requirement that alternative instruction provided for children be the "substantial equivalent" of the regular classroom training. See Matter of Watts, 23 Ed. Dept. Rep. 459 (1984), Matter of Stewart, 21 Ed. Dept. Rep. 654 (1982), and Matter of Malpica, 20 Ed. Dept. Rep. 365 (1981). The Commissioner found that alternative instruction was inadequate where a student enrolled in a biology course requiring laboratory work was not allowed access to a laboratory, where she had no typewriter to complete assignments in her typing course, and where there was no Spanish-proficient instructor for a Spanish class.

A student may not be academically penalized as a result of suspension. Students must be allowed in the school during the suspension period to take any state or local exam for which a make-up exam is not possible, and to make up any other exams or school work which may affect their grades.

Appeals of Superintendent's Suspensions

Under the Bylaws of the Board of Education, an appeal of a superintendent's suspension of an elementary or junior high school student must be made in writing within twenty school days of the decision to the appropriate community board. An appeal of a superintendent's suspension of a high school student must be made in the same way, but directed to the Chancellor. The appeal must be decided within fifteen days following the filing of the appeal.

If the decision on appeal is unfavorable or if the community board does not respond, the next appeal is to the Central Board of Education. A copy should also be sent to the Secretary of the Board of Education.

Emergency Appeals

The Chancellor is empowered to make a temporary decision with respect to a student's suspension at any time, particularly in cases where the student may suffer irreparable harm. Emergency appeals should be made to the Chancellor with copies to the Office of Legal Services.

Petition for Readmission of Students Suspended for One Calendar Year

All students, regardless of their age, may petition for readmission prior to the termination of the suspension period.

In the letter the student receives informing him/her of the suspension, the superintendent shall specify a date, between 30 and 90 calendar days of the suspension, when the student may submit a petition for readmission.

The petition should be submitted in writing to the superintendent and include evidence that the student no longer poses a danger, the reason the student is seeking readmission, character references from non-family members and other materials the parent chooses to submit.

Upon receipt of the petition, the superintendent shall grant the petitioner a readmission conference, no later than 10 days from the superintendent's receipt of the petition, where the student shall be given an opportunity to further demonstrate his or her desire to be readmitted to school.

The superintendent shall issue a written decision within ten days of the conference. If the petition is denied, the superintendent shall advise the petitioner of a new date after which another petition may be filed.

A denial may be appealed to the Chancellor within 20 calendar days. The Chancellor's decision may be appealed within 20 calendar days of receiving it to the Central Board of Education.

Readmission Following Suspension

All students, under the age of twenty-one, who were not readmitted by petition will be automatically placed in school by the superintendent at the end of their suspension period. Placement decisions may be appealed to the Chancellor, in writing, within twenty calendar days of receipt of the superintendent's decision. The Chancellor's decision may be appealed, in writing, to the Central Board within twenty calendar days of receipt.

Checklist for Superintendent's Suspensions

- * Was there a pre-suspension conference?
- * Was there a preliminary investigation of the charges before the suspension?
    - -- Was the student given an opportunity to tell his/her side of the story?
    - -- Were handwritten statements obtained from at least two witnesses?
    - -- Were signed statements obtained from the parties involved in the incident?
    - -- Were all witnesses interviewed? Were statements obtained from all witnesses?

- Who suspended the student?

- Was the student allowed to remain in school until the end of the day or until parents came to pick up the student?

- Were parents notified by telephone or telegram on the day of the suspension?

- Were parents notified by certified and regular mail?

- Did the letter include specific reasons for the suspension?

- Did the letter inform parents of the right to representation at the hearing?

- Did the letter inform parents of:
  - possible dispositions if charges are upheld?
  - the student's right to alternative instruction?
  - the right to a full description of student's rights?
  - student's right to reinstatement if the hearing is not scheduled within five school days?
  - how student's anecdotal record will be used?

- Was a hearing scheduled within five school days of the suspension?

- Were parents provided with copies of the student's records prior to the hearing?

- Did the hearing officer comply with requests to subpoena witnesses?

- Was the complaining witness present at the hearing?

- Were parents allowed to question witnesses and present other evidence?

- Did the student receive alternative instruction during the suspension?

Additional Procedures for the Suspension of High School Students

- Did the notice letter include a non-binding list of witnesses expected to testify on behalf of the school?

- Did the letter inform the parent to contact the hearing office 24 hours in advance of the hearing to alert them that the student would be represented by an advocate or attorney?

* Was the student assigned to an Outreach Center?

If the answer to any of the above questions is no, the school has not followed the procedures established by law to regulate the suspension of students from school. Suspensions may be appealed because of procedural violations.

Different procedures have varying significance within the due process requirements for suspensions. For example, the denial of a suspension hearing would be a greater violation than a hearing held on the sixth school day following the suspension. Review procedural violations to determine their impact on the fairness of the suspension before preparing an appeal. Significant violations stand a better chance of persuading the Board to reverse an unfavorable decision.

The school is required to prove the charges against the student with direct evidence. If the school has not done so to your satisfaction, this may be a basis for appeal. An appeal based on both procedural violations and substantive issues has the best chance of prevailing.

SEARCH AND SEIZURE

The Fourth Amendment to the U.S. Constitution protects people from unreasonable searches and seizures by agents of the state, such as the police. Under the Fourth Amendment, the police need to have probable cause to search a person. In the Supreme Court decision, New Jersey v. T.L.O., 469 U.S. 325 (1985), the Court decided that the Fourth Amendment's protection against unreasonable searches and seizures applies to searches conducted by school officials and that students are entitled to legitimate expectations of privacy regarding themselves and their belongings in school. However, the Court held that school officials do not need probably cause to search a student. Rather, the Court authorized searches based on a lesser standard of "reasonable suspicion." There is no search warrant requirement for students in school.

Suspicion that a search may uncover evidence of the student's violation of a school regulation or the law is considered reasonable ground for a search. However, the manner of the search may not be excessively intrusive and must be conducted in consideration of the student's age and gender and the nature of the infraction. Thus, the search must be both justified at its inception and reasonable in scope to be constitutional.

New York State requires the consideration of specific elements in determining the need for a search. The student's age, history and record in the school; the seriousness of the incident causing the search, and the necessity to search the student without delay must be considered to determine the propriety of the search. In a search in which the student was observed entering and leaving the men's room twice with a student suspected of selling drugs, the court held that the suspicions of school officials warranted surveillance but not a search. People v. Scott D., 358 N.Y.S.2d 403 (1974).

The Chancellor, applying the Scott D., decision, has ruled that a school policy which required every student brought to the dean for disciplinary purposes to submit to a pocket search violates the reasonable suspicion requirement for searches and ordered the school to discontinue their automatic pocket search policy. The student's suspension for possession of a dangerous weapon in school was sustained. However, the student was reinstated and the Chancellor agreed to seal and expunge the record of the suspension upon the student's graduation from school based on the illegal search. Matter of Reinaldo D., Chancellor's Decision, 9/29/82.

There are circumstances under which a search is authorized. For example, under the reasonableness standard, the search of a student's property was reasonable when the student was found in the vicinity of a reported robbery and was seen putting a knife in a school bag. Matter of Andre G., Chancellor's Decision, 12/4/81.

Under Chancellor's Regulation A-432, a body search of a student may not be conducted by school personnel. Any search should be conducted in privacy and in consideration of the dignity of the student. School personnel may not conduct mass searches. However, lockers may be searched without the consent of the student when there is reasonable suspicion that the search will produce evidence of a violation of the law or school regulations. Students have no expectation of privacy in a locker over which the school maintains control.

SUSPENSION OF SPECIAL EDUCATION STUDENTS

Suspensions of special education students are regulated by Chancellor's Regulation A-445. Basically, all the requirements for the suspension of students from school apply to special education students. However, special education students are entitled to additional protections.

Special education students should not be suspended simply for misconduct that is a manifestation of the student's handicapping condition. Chancellor's Regulation A-445 defines a special education student as any student who has been formally evaluated by a School Based Support Team (SBST) or Committee on Special Education (CSE) and is receiving or awaiting any type of special education service, including resource room.

A special education student may only be suspended in an "emergency circumstance." An emergency circumstance is defined as a major behavioral incident which presents a clear and present danger of injury to the student, other students or school personnel, or which is so highly insubordinate or disorderly as to significantly impair the education of other students.

Before a principal may suspend a special education student, s/he must secure permission for the suspension from the Division of Special Education. For the suspension of special education students placed in resource rooms, the principal does not have to get permission to suspend the student but must notify the Division of Special Education of the decision to suspend the student. In addition to these requirements, all requirements for principal's suspensions of students who are not in special education apply for special education students.

After a principal's suspension, the student must be reinstated to the same classroom but may be referred to the CSE for an emergency re-evaluation. Only the CSE and not the principal may recommend a change of classroom, a transfer to the same program in another school or a change of program.

Superintendent's suspensions of all special education students, including those receiving resource room services, may be authorized only in cases where the student was in possession of a weapon. Principal's suspensions are the appropriate disciplinary procedures for all other suspendable offenses. All superintendent's suspension hearings for students in grades kindergarten through twelve are held at the Special Education Office at 110 Livingston Street in Brooklyn. Hearings are conducted following the procedures used in high school superintendent's hearings.

Parents and advocates should check the student's Individualized Educational Program (I.E.P.) prior to the hearing. If the school has not provided services required by the student's IEP, parents should raise this issue at the hearing. For example, if according to his/her IEP, the student is entitled to counselling twice a week, and the student is not receiving counselling, the omission may have resulted in the misbehavior that was the basis for the suspension.

If the charges are upheld after the hearing, the possible dispositions are:

1. Reinstatement

2. Transfer to the same special education program in a difference school.

3. "Under extraordinary circumstances" continuation of suspended status pending an expedited re-evaluation by the CSE. however, no special education student may be kept out of school on suspension for more than ten school days.

In Honig v. Doe, ___U.S.___ 180 S.Ct. 592 (1988), the United States Supreme Court held that keeping a handicapped student out of school for longer than 10 days constitutes a change of placement, which can only be initiated after a review by the CSE. Therefore, unless the student is being re-evaluated, he or she should return to the former school (or, if transferred, to the new school) immediately after the hearing.

An appeal of a decision to suspend a special education student should be made in writing to the Chancellor. Appeals of decision to suspend special education students in resource rooms follow the same procedures as for all other suspensions.

APPENDIX

New York City
Board of Education

BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES

AMENDED AND CORRECTED MAY 22, 1991

BD. ED. MTG. MAY 22 1991

CAL. NO. 1

ADOPTION OF AMENDMENTS TO BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES

The following resolutions are presented for adoption:

WHEREAS, in recognition of the Board of Education's and Chancellor's belief that discipline must be enforced fairly, firmly and consistently, and that as students progress in school and advance in age and maturity, they must assume greater responsibility for their actions, on May 21, 1986, the Board of Education adopted the BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES which are applicable citywide to all students; and

WHEREAS, in accordance with Part 100 of the Commissioner's Regulations, community school districts and centrally administered programs were required to develop their own written policies of student conduct and discipline consistent with the Board of Education's policy and with guidelines issued by the Chancellor; and

WHEREAS, the Board of Education and the Chancellor have reviewed discipline policy in order to determine what measures are most effective in ensuring that learning and teaching take place in an environment which is safe and which fosters mutual respect between adults and students; and

WHEREAS, the Chancellor assembled an Interdisciplinary Task Force on Student Safety and Discipline to develop recommendations for a comprehensive policy on student safety and discipline; and

WHEREAS, there have been public hearings and consultation with teachers, supervisors, administrators, other school professionals, students, parents, community school boards and representatives of unions, advocacy groups, community-based organizations and other professional groups; and

WHEREAS, the Board of Education and the Chancellor believe that in seeking to impose discipline, school officials should explore alternatives to suspension including guidance intervention, parent involvement, mediation and conflict resolution; now, therefore be it

RESOLVED, that as set forth and fully incorporated below, the Board of Education hereby amends, effective for the 1991-92 school year, the BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES (the "Discipline Code") which are applicable to prohibited actions of students in school during school hours, before and after school while on school property, while traveling on vehicles funded by the Board of Education, at all school-sponsored events and on other than school property when such behavior is demonstrated to negatively affect the educational process or present a danger to the health, safety, morals or welfare of the school community; and be it further

RESOLVED, that the Chancellor shall ensure that all community school districts and centrally administered programs review, amend and submit to the Chancellor for approval their written policies on student conduct and discipline, which policies must be consistent with the Discipline Code, as set forth below, Part 100 of the Regulations of the New York State Commissioner of Education and in accordance with procedures and requirements established by the Chancellor which must include meaningful consultation with parents, students and staff, it being understood that the Discipline Code adopted herein shall govern all centrally administered programs; and be it further

RESOLVED, that pending such review, amendments and approval, existing community school districts' discipline codes shall continue to govern in community school districts, it being understood that community school boards shall take all steps necessary to amend such codes for dissemination and implementation no later than October 31, 1991, so as to be consistent with the Discipline Code adopted herein; and be it further

RESOLVED, that the Chancellor shall implement this Resolution in accordance with the Chancellor's Summary of Activities to implement student conduct and discipline policies; shall ensure that all policies are reviewed annually; shall monitor implementation of such policies, monitoring to include at least the number of students suspended, grade levels and types of offenses, racial/ethnic background and gender of suspended students, parent outreach and training, training of staff, provision of and kinds of alternative instruction provided, the Chancellor to report on his findings and recommendations annually to the Board.

BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES

(THE DISCIPLINE CODE)

The New York City Board of Education establishes these citywide standards of conduct and uniform disciplinary measures to ensure that all students are treated equitably throughout the school system. These standards of conduct and disciplinary measures shall apply to students in all schools and programs systemwide.

These standards of conduct apply to prohibited actions of students in school during school hours, before and after school while on school property, while traveling on vehicles funded by the Board of Education, at all school-sponsored events and on other than school property when such conduct can be demonstrated to negatively affect the educational process or endanger the health, safety, morals or welfare of the school community.

It is important that there be maximum consultation and cooperation between the school and the home. Parents are to be kept informed about their child's conduct in school.

A student's age, maturity, handicapping condition and intention should be considered when deciding the level of severity for an infraction.

INFRACTIONS AND ASSIGNED LEVELS OF SEVERITY

This list is not intended to be all inclusive. Infractions not listed are subject to disciplinary measures by the teacher and/or principal, with appropriate review by the principal and/or superintendent. However, school rules should be in writing and distributed to all students and staff.

NOTE: Intervention measures listed herein indicate that parents must be notified for any infraction which receives a rating of 3 or higher. However, the nature of some infractions is such that parents are to be notified even if the rating is 1. These infractions are so noted.

When a student is believed to have committed a crime, the police must be summoned.

INFRACTION	LEVEL OF SEVERITY
1. Behaving in a manner which disrupts the educative process (e.g., making excessive noise in a classroom, hall or school building)	1 to 3
2. Not being in assigned place on school premises	1 to 3
3. Cutting classes	1 to 3 (Parent must be notified)
4. Leaving class or school premises without permission of supervising school personnel	1 to 3 (Parent must be notified)
5. Being late for school or class	1 to 3
6. Bringing proscribed equipment or material to school without authorization (transistor radio, tape recorder)	1 to 3
7. Wearing apparel that is unsafe or materially disruptive to the educational process	1 to 3
8. Posting or distributing material on school premises in violation of written school rules. (The standards for posting or distributing materials on school premises set forth in Regulation of the Chancellor A-401 must be adhered to by all schools in order to comply with law.)	1 to 3
9. Smoking	1 to 4 (Parent must be notified)
10. Gambling	1 to 4 (Parent must be notified)

INFRACTION	LEVEL OF SEVERITY
11. Engaging in scholastic dishonesty which includes but is not limited to: a) Cheating i) copying from another student's test paper; or ii) using material during a test which is not authorized by the person giving the test; or iii) collaborating with another student during the test without authority; or iv) knowingly using, buying, selling, stealing, transporting or soliciting in whole or part the contents of an unadministered test; or v) substituting for another student or permitting another student to substitute for one's self to take a test; or vi) bribing another person to obtain a test that is to be administered; or vii) securing copies of the test or answers to the test in advance of the test; or	1 to 4 (Parent must be notified. Also academic sanctions related to the infraction may be imposed.)

INFRACTION	LEVEL OF SEVERITY
b) Plagiarizing	
i) appropriating another's work and using as one's own for credit without the required citation and attribution	
c) Colluding	
i) engaging in fraudulent collaboration with another person in preparing written work for credit	
12. Using profane or obscene language or gestures	1 to 4
13. Lying or giving of false information verbally or in writing to school personnel	1 to 4
14. Using racial, ethnic, national origin, religious, gender or sexual orientation slurs	2 to 5
15. Engaging in sexual harassment	2 to 5
16. Defying the lawful authority of school personnel, insubordination (e.g., repeated violations)	1 to 5
17. Posting or distributing obscene, libelous or defamatory material or literature	1 to 5
18. Engaging in or causing disruptive behavior on school bus	1 to 5 (Parent must be notified)

INFRACTION	LEVEL OF SEVERITY
19. Engaging in or causing behavior off the school premises which can be demonstrated to negatively affect the educational process or which presents a danger to the health, safety, morals or welfare of the school community. A nexus between the act and the school community must be demonstrated	1 to 6
20. Engaging in vandalism or other intentional damage to property belonging to the school staff or other students (e.g., graffiti)	2 to 5 (Parent must be notified)
21. Bringing unauthorized visitors to school in violation of written school rules	3 to 5
22. Tampering with, changing, or altering a record or document of a school by any method, including but not limited to, computer access or other electronic means	3 to 5
23. Falsely activating a fire alarm, bomb threat or other disaster alarm	4 to 5
24. Engaging in theft	3 to 6
25. Possessing or using controlled substances without appropriate authorization	4 to 6
26. Engaging in intimidation, coercion, or extortion	4 to 6

INFRACTION	LEVEL OF SEVERITY
27. Possessing any weapon as defined in Category II of Chancellor's Regulations A-430, A-440 or A-441 or successors thereto	5 to 6
28. Engaging in behavior which creates a substantial risk of or results in injury (e.g., committing arson or causing a riot)	5 to 6
29. Possessing or using illegal drugs or alcohol	5 to 6
30. Using any weapon to inflict injury or to attempt to inflict injury upon school personnel, students or others	6
31. Possessing any weapon as defined in Category I of Chancellor's Regulations A-430, A-440 or A-441 or successors thereto	6
32. Using force against or inflicting serious injury against school personnel	6
33. Using extreme force or inflicting serious injury upon students or others	6
34. Selling or distributing illegal drugs or controlled substances	6

INTERVENTION MEASURES AND PENALTIES

Schools may use one or more of the following, as appropriate.

Wherever possible, intervention measures and penalties should be related to the infraction. Service to school, including service to other students and to the community, is a positive measure to be encouraged for many infractions (e.g., decorating the school, homework assistance, volunteer work, errands for senior citizens).

The following list of intervention measures and penalties is not all inclusive. Other actions (e.g., loss of extracurricular privileges) deemed appropriate by the superintendent may be taken provided that such action is not in conflict with Regulations of the Chancellor or Board policy. All entries in student records must be made in accordance with Regulation of the Chancellor A-820. IT MUST BE EMPHASIZED THAT ALL SUSPENSIONS MUST BE EFFECTUATED SUBSTANTIVELY AND PROCEDURALLY IN ACCORDANCE WITH APPROPRIATE BOARD OF EDUCATION BYLAWS, REGULATIONS OF THE CHANCELLOR, STATE EDUCATION LAW (SECTION 3214) AND FEDERAL LAW (PL94-142).

NOTE:

- All infractions given a rating of 3 and/or higher must be reported to the parent.
- More than one action may be appropriate for a given infraction (e.g., for a level 4 infraction, the student may be asked to make restitution and may be referred to mental health staff).
- School officials may impose any disciplinary measure set forth in the applicable minimum action or maximum action category. A student's age, maturity, handicapping condition and intention should be considered when deciding the level of severity for an infraction.

LEVEL OF SEVERITY	MINIMUM ACTION	MAXIMUM ACTION
1	•Student/teacher conference	•Reprimand by school staff (e.g., dean, teacher) •Home contact (e.g., letter, phone)
2	•Reprimand by school staff (e.g., dean, teacher) •Home contact (e.g., letter, phone)	•Parent conference •Reprimand by appropriate supervisor (e.g., asst. principal, principal)
3	•Parent conference •Reprimand by appropriate supervisor (e.g., asst. principal, principal)	•In-school disciplinary action (e.g., mandated service, exclusion from extracurricular activity) •Individual/group counseling Guidance conference with student and parent
4	•In-school disciplinary action (e.g., mandated service, exclusion from extracurricular activities) •Individual/group counseling •Guidance conference with student and parent	•Restitution •Intervention by mental health staff •Referral to appropriate community agencies
5.	•Restitution •Intervention by mental health staff •Referral to appropriate community agencies •Principal's suspension	•Superintendent's suspension which may result in transfer to another school or *continued suspension for a fixed period of 6 to 30 school days
6.	•Superintendent's suspension which may result in transfer to another school or *continued suspension for a fixed period of 6 to 30 school days	•Initiating criminal charges •Superintendent's suspension which may result in extended suspension for one calendar year for high school students and ninth grade students in the community school districts

*Continued suspension is not available as a dispositional option for students in grades K-3

EXPLANATION

On May 21, 1986, the Board of Education adopted its Citywide Standards of Conduct and Uniform Disciplinary Measures (the Discipline Code). Since that time, the Board of Education and the Chancellor have periodically reviewed discipline policy in order to determine what measures are most effective in ensuring that learning and teaching take place in a safe environment. Toward that end, the Board of Education held a public hearing on safety and discipline. In addition, widespread consultation was held regarding this issue. Thereafter, the Chancellor assembled an Interdisciplinary Task Force on Student Safety and Discipline which issued a report. Another public hearing was held on safety and discipline. After studying the suggestions of the Task Force and the testimony at the public hearing, the Chancellor developed an overall safety and discipline plan. As part of the plan, the Chancellor recommended changes in discipline policy, including certain revisions to the BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES, which have been extensively reviewed by the Board of Education. Changes in policy and revisions to the Discipline Code include the following:

- Dispositional options available to school officials have been expanded to include continued suspension for a fixed period of 6 to 30 school days for students in grades 4 - 12 and extended suspension for one calendar year for students in grades 9 - 12; and

- Alternative instruction will be provided to all suspended students, regardless of their age; and

- A Principal's suspension of students in grades K-3 must be approved by the Community Superintendent; and

- The level of severity for engaging in certain behaviors has been increased.

In accordance with Part 100 of the Regulations of the New York State Commissioner of Education, a written policy on student conduct and discipline must be developed by each community school district and centrally administered programs, in consultation with teachers, supervisors, administrators, other school service professionals, students, parents, employee unions and parent associations. Such policies must be consistent with the BOARD OF EDUCATION CITYWIDE STANDARDS OF CONDUCT AND UNIFORM DISCIPLINARY MEASURES and must be submitted to the Chancellor for approval. Each policy must include at least the following:

a) a statement of rights and responsibilities of students;

b) a discipline code* which sets forth prohibited student conduct, the range of penalties and/or intervention measures for infractions and the roles of teachers and administrators, board members and parents in implementing the policy;

c) strategies and procedures for maintaining and enforcing public order on school property;

d) the procedures in each school building to involve pupil personnel services, including the School Based Support Team (where appropriate), supervisors, administrators, teachers, students and parents in the early identification and resolution of discipline problems;

e) alternative educational programs appropriate to individual student needs;

f) intervention measures for violation of school policies which are appropriate to the seriousness of the offense and previous discipline record of the student and which incorporate the requirement of alternative instruction in accordance with law and Chancellor's Regulations;

g) guidelines for annual professional staff development programs to ensure effective implementation of the policy;

h) provisions for annual review of the policy and amendments, as appropriate;

i) provisions for maintaining the policy in school files and making the policy available to the public upon request.

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*For centrally administered programs, the Discipline Code adopted herein is effective for the 1991-92 school year, parents, students and staff to be provided with copies of the Discipline Code prior to implementation.

j) provisions for publicizing and explaining the discipline code to all students on an annual basis and for disseminating the code to all parents and staff on an annual basis; and

k) a statement that students' due process rights must be protected and that violations of these rights may result in modification of the suspension decisionand that appropriate disciplinary measures of staff may be instituted.

The Discipline Code adopted herein shall be applicable to centrally administered programs (high schools and citywide special education) effective for the 1991-92 school year. Centrally administered programs must adopt a policy on student conduct and discipline which shall include the components set forth in a-k above except b. Community school districts must review existing discipline codes and adopt a policy including a-k above. Discipline codes are to be consistent with the citywide code, and shall be adopted after consultation with parents, students and staff. Revised district discipline codes must be disseminated and implemented no later than October 31, 1991. Until such time, current district discipline codes govern. The Chancellor will establish procedures and guidelines to assist in the development of all student conduct and discipline policies. All policies must be adopted and submitted to the Chancellor for approval in order to ensure timely implementation. All policies are to be translated, as necessary, for parents and students whose first language is not English.

Chancellor's Regulations are being revised to conform with changes in policy and revisions to the Board of Education Citywide Standards of Conduct and Uniform Disciplinary Measures and will be promulgated shortly to be effective for the 1991-92 school year.

The Chancellor will review the Board of Education's Statement on Student Rights and Responsibilities and recommend revisions thereto for adoption by the Board as a citywide policy.

A TRUE COPY OF AMENDED-CORRECTED RESOLUTION(S) ADOPTED
BY THE BOARD OF EDUCATION ON

ASSISTANT SECRETARY, BOARD OF EDUCATION

A. In the case of students, a principal may impose appropriate disciplinary penalties, including reprimand, probation, or a suspension in accordance with Section 3214 of the Education Law and the Regulations of the Chancellor (A-440). In appropriate cases, the principal may request a Superintendent's suspension in accordance with Section 3214 of the Education Law; such action may result in suspension, transfer, expulsion, or other appropriate disciplinary action in accordance with law, policy and regulations.

B. In the case of teachers and other staff members, violations may result in warning, reprimand, fine, suspension, transfer or dismissal in accordance with applicable provisions of the Education Law, the Civil Service Law, the Bylaws and regulations of the Board of Education, and appropriate contracts.

C. In the case of visitors, guests, invitees and licensees, violations may result in the following:

1. In the event of interference with the orderly operation of school programs, the violator may be removed from school property. In serious cases involving interference with governmental administration, trespass, or loitering, violators are subject to removal, arrest and prosecution.

2. In the event of damage to school or personal property, assault or robbery, and related offenses, violators are subject to arrest and prosecution.

3. In the event of possession of dangerous drugs, narcotics or dangerous weapons violators are subject to arrest and prosecution.

IV. Each Community Board or its designated representative may promulgate such supplemental rules and regulations as it deems necessary or desirable to govern the conduct of students, teachers and other staff as well as visitors and other licensees and invitees in the schools under its jurisdiction, provided that such rules and regulations are not inconsistent with law, citywide policy or these regulations.

V. Nothing in these regulations shall be construed to permit or authorize the restriction of freedom of speech, peaceful assembly or the rights and responsibilities of students, staff, parents, parent associations or other citizens as guaranteed under law, policies and regulations.

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Issued: 10/1/79

City School District of the City of New York

Regulation of the Chancellor

Category: STUDENTS

Subject: MAINTENANCE OF PUBLIC ORDER ON SCHOOL PROPERTY

I. Public schools, as public institutions, must provide a safe environment for students, staff, parents and visitors. The following actions are specifically prohibited: willful physical injury to any person; willful damage to property; willful disruption of the orderly conduct of classes or any other school program or activity; willful interference with the lawful and authorized activities of members of the school community, such as students, staff or parent organizations; entry upon school property for any purpose other than its authorized use, and the illegal or unauthorized possession on school property of narcotics, dangerous drugs or dangerous weapons as defined by law.

II. Principals of schools as chief administrative officers of the schools which they head, are responsible for the good order of the schools. Further, they are responsible for developing plans, programs, and systems which provide for public order and the safety of students, staff, parents and visitors in their respective schools. Such plans shall include but need not be limited to the following: fire emergency and fire drills; bomb threat and school evacuation emergency; other public order emergency which may require the assistance of law enforcement or public safety agencies; accidents or incidents involving physical injury; the admission and regulation of visitors to the school building; peaceful demonstrations on school property; the use of school buildings or portions thereof during other than regular school hours by authorized individuals or groups; vehicle traffic on school property; access to special areas of potential danger on school property, such as heating plants and electrical facilities. Such plans shall be consistent with established laws, policies, rules and regulations, and shall be submitted as appropriate to Community School Boards or central authorities for review when so directed.

III. Any student, teacher or other staff member, visitor or other licensee or invitee who commits a criminal act while in a school or on school property is subject to arrest and prosecution or, in the case of minors, to appropriate proceeding in accordance with law. Persons who commit such acts, or who violate these rules and regulations or such supplemental rules and regulations as are lawfully promulgated by the Chancellor or his designated representatives, also are subject to removal from the school or school property where their act or action is a danger to the safety of others or interferes with the regular programs or activities of the school.

City School District of the City of New York

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Issued: 10/1/79

Regulation of the Chancellor

Category: STUDENTS

Subject: SECURITY IN THE SCHOOL

I. INTRODUCTION

In keeping with decentralization, it is the responsibility of community school boards to provide for safety in schools/ educational facilities under their respective jurisdictions; it is the responsibility of central units to provide for safety in schools/educational facilities under their respective jurisdictions. These regulations reflect this fundamental principle and include the responsibility of the Chancellor to set minimum standards, to provide services to the community school districts, and to monitor programs city-wide.

II. RESPONSIBILITY OF THE DIRECTOR OF THE OFFICE OF SCHOOL SAFETY

The Director of the Office of School Safety, under the over-all jurisdiction of the Office of Pupil Personnel Services, is the primary representative of the city school system on matters of safety in schools.

III. RESPONSIBILITY OF THE PRINCIPAL/HEAD OF SCHOOL IN MATTERS OF SAFETY

The principal/head of school is responsible for the safety of students, staff and visitors in the school/facility. As minimum standards which apply city-wide, the principal shall:

A. Ensure compliance with rules and regulations for the maintenance of public order on school property.

B. Supervise safety personnel under his or her jurisdiction.

C. Implement the school safety plan as approved by the Central Office of School Safety, as well as Board of Education policies, regulations and directives that pertain to safety.

D. Update the School Safety plan yearly (by October 30th of each year) to reflect changing problems and conditions in the schools. Submit the year's plans to the appropriate superintendent and to the Office of School Safety.

E. Establish rules and procedures for visitors.

F. Establish a School Safety Committee the membership of which shall include a broad range of persons in the school community, i.e., pedagogic, non-pedagogic, safety, custodial, students, parents, unions, etc. This committee shall meet on a regular basis to discuss problems or issues relating to the safety and security of the school.

G. Establish cooperative relationships with the school's parent association and/or consultative council, the student government, community groups and organizations, and social agencies concerned with youth and public safety. In cooperation with the Police Commissioner's policy, principals will meet with local police precinct commanders three times a year, usually in October, February, and May. Additional meetings will be held at other times of the year as the need arises.

H. Consult and cooperate with the Office of School Safety on matters of school security.

I. Summon the assistance of police or other law enforcement or public safety agencies in appropriate situations, and cooperate with said agencies where criminal acts on school property are involved. In all cases where a crime has been committed an immediate notification must be made to the police, the Office of School Safety, and the appropriate superintendent.

   1. In cases where police are called to investigate an alleged offense committed on school property the principal/head of school may permit police to interview complainants and to interview witnesses. No witness is required to submit to an interview with the police in the school.

   2. The principal/head of school or his/her designee shall be present during all police interviews with students in the school.

   3. The principal/head of school shall not allow police to remove a student from school except where the student is placed under arrest or is removed pursuant to a warrant or order for arrest issued by the courts.

4. Where a student is arrested the principal/head of school shall notify the parent immediately. If the parent cannot be reached, the principal/head of school shall request of the arresting officer that a member of the school staff accompany the student and remain with the student for a reasonable length of time or until the parent or guardian assumes parental responsibility. If permission to accompany the student is denied, a member of the staff shall follow immediately to the place the student is taken.

5. The principal/head of school shall keep a record of all circumstances leading to the arrest of a student including the name and shield number of the arresting officer.

J. All cases involving assaults on teachers must be reported to the Office of the Counsel by telephone immediately (596-4197).

PROCEDURES FOR REPORTING INCIDENTS IN SCHOOL OR ON SCHOOL PROPERTY

A. The principal or the person in charge of a school must report all incidents which occur in or about the school premises and all incidents which occur in connection with school activities away from school premises, using incident report form 731A provided by the Office of School Safety. In all cases where a loss of property occurs a copy of form P.O. 4 must be forwarded with the incident report to the Office of School Safety.

B. Incident Reports shall be prepared by the principal/head of school or by an authorized staff member. When completed, incident reports shall be signed by the principal/head of school or a designated representative.

C. Completed and signed incident reports shall be mailed no later than the working day following the incident and distributed as follows:

Original	--	to the Office of School Safety
Second copy	--	to the community or assistant superintendent
Third copy	--	to the school custodian
Fourth copy	--	retained by the principal

City School District of the City of New York

Regulation of the Chancellor

Category: STUDENTS

Subject: SECURITY IN THE SCHOOL

D. The principal/head of school must make an immediate telephone report in accordance with the procedures set forth below in cases of serious criminal incident, arrests, injury resulting from criminal acts, or serious incidents of disturbance or confrontation. In addition to the telephone report, the principal/head of school must complete and mail the Incident Report Form.

1. Centrally-operated schools

   Telephone reports shall be made immediately to the Executive Director or appropriate supervising assistant superintendent, and to the Office of School Safety.

2. Schools in Community School Districts

   The telephone reports shall be made immediately to the Community Superintendent, who in turn shall telephone the Office of School Safety. Where the Community Superintendent cannot be reached, the principal/head of school shall telephone his/her report directly to the Office of School Safety, and notify the Community Superintendent subsequently.

3. Where a telephone report has been made, the completed incident report shall carry a notation to this effect and of the date and time of the telephone report.

E. Witnesses

The principal/head of school or his/her designated representative shall obtain handwritten statements of at least two witnesses, as well as a signed statement from the parties involved, enumerating time, date and place of ocurrence, with an accurate account detailing the nature and sequence of events. Statements of witnesses shall be attached to the completed report form.

V. INJURY TO A PERSON-REPORT OF ACCIDENT

In cases where injury occurs to a pupil, to an employee of the Board of Education, or to a person on or about the school premises, whether the result of an incident or of an accident, principals shall also file a Report of Accident. See Regulation No. A-730 for reporting requirements for accidents.

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CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

Category: STUDENTS

Subject: Pupil Behavior and Discipline - Corporal Punishment

No.: A-420

Page: 1 of 3

Issued: 5/13/86

ABSTRACT

This regulation updates and supersedes Regulation of the Chancellor A-420, dated September 1, 1984, regarding prohibition of corporal punishment. It enforces Board of Education bylaws and includes reporting requirements established under Commissioner's Regulation 100.5(a) concerning the use of physical force upon a student for punishment purposes.

I. INTRODUCTION

Disruptive behavior by a student must never be punished by use of physical force. Such behavior usually reflects underlying problems that require guidance intervention. School personnel should take steps to identify the problem(s) and, working closely with parents, help the student receive maximum benefit from the educational program offered at the school.

II. GENERAL PROCEDURES

A. Principals shall bring to the attention of all members of the staff Section 10.4 of the Bylaws of the City Board of Education which is as follows:

> NO CORPORAL PUNISHMENT SHALL BE INFLICTED IN ANY OF THE PUBLIC SCHOOLS, NOR PUNISHMENT OF ANY KIND TENDING TO CAUSE EXCESSIVE FEAR OR PHYSICAL OR MENTAL DISTRESS. VIOLATION OF THIS BYLAW SHALL CONSTITUTE GROUNDS FOR DISMISSAL.

This bylaw remains in full force and effect and cannot be waived by prior approval or consent of parent or guardian.

The principal, in consultation with the superintendent, shall file the necessary charges against any staff member found to be in violation of the above bylaw and this Regulation.

B. Regulation of the Commissioner of Education, 100.5(a) defines corporal punishment as any act of physical force upon a pupil for the purpose of punishing that pupil.

Corporal punishment shall not mean the use of reasonable physical force for any of the following purposes:

1. to protect oneself from physical injury;
2. to protect another pupil or teacher or any other person from physical injury;
3. to protect the property of the school or of others; or
4. to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts, provided that alternative procedures and methods not involving the use of physical force cannot reasonably be employed to achieve the purposes set forth in 1 through 3 above.

III. REPORTING

The Regulation of the Commissioner of Education regarding corporal punishment requires a semi-annual report to the Commissioner by January 15 and July 15 of each year, commencing July 15, 1985. The report shall set forth the substance of each complaint about the use of corporal punishment received by the local school authorities during the report period, the results of each investigation and the action, if any, taken by the local school authorities in each case.

In order to effectuate compliance with the regulations of the Commissioner, principals are asked to submit the following:

A. Report of Incident of Corporal Punishment

This form is to be completed, signed by the principal and copies forwarded simultaneously within five days of the incident to the appropriate superintendent and to:

Administrator
Office of Appeals and Review
65 Court Street - Room 717
Brooklyn, New York 11201

In aggravated cases or cases involving hospitalization the Office of Appeals and Review, (718) 596-6570, is to be notified immediately.

B. Summary Form/Corporal Punishment

This form is to be completed by December 15 and June 15 of each year. It is to be signed by the principal and forwarded to the appropriate superintendent for signature. The superintendent is to forward the form to the Administrator of the Office of Appeals and Review by December 30 and June 30 of each year.

IV. Any inquiries concerning this Regulation should be addressed to:

Administrator
Office of Appeals and Review
65 Court Street - Room 717
Brooklyn, New York 11201
(718) 596-6570

City School District of the City of New York

Regulation of the Chancellor

Category: STUDENTS

Subject: SEARCH AND SEIZURE BY SCHOOL OFFICIALS

I. INTRODUCTION

Every citizen has the fundamental right, secured to him or her by the Fourth and the Fourteenth Amendments to the Constitution, to be free from unreasonable searches and seizures, both with respect to his or her person and effects. These rights of pupils and others should at all times be respected. Under no circumstances should personnel conduct mass searches or indiscriminate searches of pupils.

In specific cases where there is a sufficient basis for a search, school personnel may lawfully search a pupil. One of the key elements in sustaining a search is the "reasonableness" of the search and the method used. It is incumbent upon the person ordering or conducting the search to see that the search is conducted with a reasonable degree of privacy and consideration for the dignity of the individual. Extreme caution should be exercised in this area, even to the extent of instructing subordinates that a body search should not be undertaken by school personnel.

II. SEARCH OF A STUDENT'S PERSON

In People of the State of New York v. Scott D., 34 N.Y. 2d 483 (1974), the Court of Appeals recognized that public school authorities have special responsibility and correspondingly broad power to control school grounds in order to protect students entrusted to their charge. Chief Judge Breitel noted that:

> A school is a special kind of place in which serious and dangerous wrongdoing is intolerable. Youngsters in a school, for their own sake, as well as that of their age peers in the school, may not be treated with the same circumspection required outside the school or to which self-sufficient adults are entitled. The fact of an epidemic danger in the school may not be ignored in theory or in reality. The dangerous drug prevalence in many schools and in many areas is a significant fact to be considered in determining the scope of reasonableness in making searches (cf. Education Law SS 912-a, 302-a).

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The Court held that the ban against unreasonable searches and seizures was applicable to situations involving administrative searches as well as criminal proceedings, but that a wider latitude for determining whether there was sufficient cause for a search would be permitted than that normally applied to an adult or to any person outside the school precincts. Among the factors to be considered in determining the sufficiency of cause to search are "the child's age, history and record in the school, the prevalence and seriousness of the problem in the school to which the search was authorized, and, of course, the exigency to make the search without delay."

III. SEARCH OF A LOCKER

Where school authorities have a reasonable suspicion that contraband is secreted in a student's locker, they may act upon that decision and search such locker without the necessity for obtaining the student's consent (People v. Overton 24 N.Y. 2d 522). The locker search was distinguished from the personal search by the Court of Appeals in People of the State of New York v. Scott D., supra, which noted that the "facts there indicated that the student had no reasonable expectation of privacy in a locker over which the school authorities had retained extensive control. This reasoning has no application and is unpersuasive with respect to a student's person."

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

No.: A-440

Category: STUDENTS

Page: 1 of 34

Subject: SUSPENSION OF OTHER THAN SPECIAL EDUCATION STUDENTS IN ELEMENTARY, INTERMEDIATE AND JUNIOR HIGH SCHOOLS

Issued: 10/1/93

ABSTRACT

This Regulation governs the suspension of elementary, intermediate and junior high school students except for suspensions involving special education students. The procedures for the suspension of special education students are described separately in Chancellor's Regulation A-445, Suspension of Special Education Students. This Regulation supercedes Chancellor's Regulation A-430, Carrying Weapons in Schools, with respect to regular education students.

This Regulation applies to prohibited actions of students in school, during school hours, before and after school while on school property, while traveling on vehicles funded by the Board of Education, at all school-sponsored events and on other than school property, which negatively affect the educational process or endanger the health, safety, morals or welfare of the school community.

This Regulation updates and clarifies suspension procedures and carefully defines the school officials who may authorize suspensions. It delineates each step to be followed in suspension proceedings and sets forth the due process rights of students, as required by State law and the Bylaws of the Board of Education. This Regulation also expands the range of dispositional options that are available where a student has been suspended by the superintendent to include extended suspension for one calendar year of ninth grade students and continued suspension for a specified period of six to 30 days of students in grades 4 to 9. These options are subject to the availability and provision of

alternative education. Guidance considerations and alternative techniques that should be used by school personnel in place of disciplinary actions are also addressed herein. School officials must consult the Discipline Code in determining what level of discipline to impose. School officials are responsible for sharing the information contained herein with students, staff, and parents.

This Regulation does not govern transfers resulting from cumulative behavioral and/or academic problems.

I. PREVENTION PROCEDURES

A. General Considerations

When a student engages in disruptive behavior, school officials should explore techniques for resolving the behavioral problem.

School personnel should develop plans for alleviating a student's problems and discuss these alternatives with the student and his/her parent.* These plans might include the use of alternative instructional materials and/or approaches, alternative classroom management techniques, remedial services, alternative class placement, guidance support and services to address personal and family circumstances. If after appropriate alternative techniques have been considered, a principal suspects that a student's difficulties may be a manifestation of a handicapping condition which prevents the student from benefitting from general education, the principal shall immediately refer the student to the School Based Support Team or Committee on Special Education. All preventive efforts should be described in the student's record.

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*The term "parent," whenever used in this Regulation, shall mean the student's parent(s) or guardian(s), or any person or agency in a parental or custodial relationship to the student, or the student if he/she is an emancipated minor or has reached 18 years of age.

B. Principal's Guidance Conference

Where a student exhibits a behavior problem, school officials shall encourage parental input in exploring various alternatives to meet the student's needs.

1. Guidance conferences attended by the principal, guidance counselor, the student's parent, and one or more of the student's teachers, should be held with a student who exhibits a behavior problem where appropriate. Parents should be advised of their right to bring advisors to these conferences. The conference should be structured as a guidance session to assist the student in resolving the problem.

2. The guidance conference may not be used as a vehicle for determining whether or not a student should be suspended.

3. The principal should notify the parent by letter* that he/she should attend the guidance conference. The following is a suggested format:

"I am very anxious to meet with you to discuss a serious incident involving your child (Name). Would you please come in to see me on (Date-Time-Place) so that we can plan ways to resolve this matter. You may bring an advisor to this conference.

I must stress the urgency of our arriving at a joint solution so that we may avoid future disciplinary measures, which may include suspension."

II. SUSPENSION PROCEDURES

Suspensions fall into two categories: (1) principals' suspensions; and (2) superintendents' suspensions. Suspension is a serious step and school officials should use appropriate alternative techniques to avoid it.

A. Principals' Suspensions

1. The principal shall have power to suspend a student when the principal determines that a student's

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*Any letter sent in connection with this Regulation shall be sent, where feasible, in the parent's dominant language or mode of communication. In those cases where it is not possible to obtain a full translation of the letter, the letter shall be sent in English with an attached notice in the parent's dominant language or mode of communication stating the following: "The attached letter contains important information about your child. Please have it translated as soon as possible."

overt behavior presents a clear and present danger of physical injury to the student, other students, or school personnel, or prevents the orderly operation of classes or other school activities. Prior to suspending a student, the principal shall consult the Discipline Code.

2. Only the principal, or in the principal's absence, the school official designated as "acting principal," may authorize a principal's suspension.

3. A principal must seek the authorization of the superintendent prior to suspending a pupil in grades K-3. Before authorizing the suspension, the superintendent must consider what other disciplinary, guidance and intervention measures the school has considered.

4. A principal may suspend a student from one to five days, but in no case in excess of five school days. Not all behavior warrants a full five day suspension. A student may not be suspended twice for the same incident. A student cannot be suspended by a principal more than twice in one school year.

5. When a principal believes that a suspension may be warranted, the student shall be removed from classes and informed of the charges against him/her. If the student denies the charges, the principal shall give the student an explanation of the evidence and an opportunity to present his/her side of the event, if it is feasible to do so.

6. If the principal (or superintendent, for a pupil in grades K-3) decides that suspension is not warranted, the student shall be returned to class.

7. If the principal decides that suspension is warranted (and the superintendent authorizes the suspension in grades K-3), he/she shall detain the student in school under supervision until either the arrival of the student's parent or until the close of the student's school day.

8. The principal shall give immediate written notice of the suspension to the student's parent. Such notice shall be provided by personal delivery, express mail delivery or any other equivalent means reasonably calculated to assure receipt of such notice within 24 hours of the suspension. The notice shall provide a description of the incident which resulted in the suspension and advise the parent that a suspension conference will be scheduled within five school days of the date of the suspension. The principal shall also give immediate notice of the suspension to the parent and superintendent by telephone. The principal must inform the parent of the location at the school where he/she can pick up the student. Every effort must be made to arrange a principal's suspension conference at a mutually acceptable date and time. The suspension conference should be scheduled as soon as possible, but in no event later than five school days from the date of the suspension.

9. The principal shall also send the parent a letter, by both certified and regular mail, which shall be posted on the day of the suspension. A copy of the letter must be forwarded to the community superintendent. The letter must inform the parent: (a) that the student is suspended and should not return to school during the suspension

period; (b) the specific reason(s) for the suspension including date, time and place of the behavior giving rise to the supension; (c) that the parent's presence is required at a suspension conference to discuss the suspension; (d) the date, time and place (no more than five school days from the date of the suspension) of the conference; and (e) that if the parent's dominant language or mode of communication is not English and a translator is required, the parent should bring a translator to the suspension conference. The letter must also provide a statement of the student's rights, including the right to: 1) question persons involved in the incident for which the student has been suspended; 2) request and present witnesses and documentary evidence; 3) be accompanied by up to two advisors; 4) be returned to school at the end of the suspension period; and 5) appeal the suspension decision. (A copy of procedures for appealing any actions which have been taken with respect to the suspension must be enclosed with the letter.)

10. Students may not be academically penalized* during the suspension period and must be provided with alternative instruction. Accordingly, all classwork and homework assignments must be sent to the student's home during the suspension period. Students must be permitted to take any City-wide or

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*An academic penalty, such as reduction of grade, may only be imposed as a disciplinary measure if the conduct for which a student was suspended is directly related to an academic activity (e.g. plagiarism, cheating on an examination). An academic penalty may not be imposed for absence during the suspension period.

State examinations that are administered during the period of their suspension for which no make-up examination is permitted by the testing authority; as well as to make-up school examinations, such as finals, which may affect their academic records.

11. Principal's Suspension Conference

The conference presents an opportunity for parents, students, teachers and school officials to assess the facts surrounding the incident for which a student was suspended, to determine whether or not the suspension was justified, to devise collaboratively satisfactory solutions and to prevent further disruption of the student's education.

Suspension conferences shall include the following procedures:

a. The school principal, or in the principal's absence, the school official designated as "acting principal," shall conduct the conference.

b. If the parent's dominant language or mode of communication is not English, the parent may bring a translator to translate the proceedings.

c. The conference will be held on the scheduled date unless the parent requests an extension of the date from the principal. If the new date requested falls more than five school days from the date of the suspension, the student must be reinstated no later than the sixth day following the suspension.

d. Every effort should be made to secure the parent's attendance. However, if the student and parent, after appropriate notice, do not appear at the conference, the principal may hold the conference on the scheduled date.*

e. The conference is not a formal, contested proceeding and should not become adversarial. A primary purpose of the conference is to design measures to maximize the student's educational development.

f. The parent and the principal each may bring no more than two persons to assist them in the conference, unless the parent and principal agree to the presence of additional persons. Both parties may also present witnesses and offer statements and other documentary evidence. The additional persons brought by the parties may be attorneys or advocates. Although they may participate only as advisors, they may, like the student and parent, participate freely in the discussion, question all witnesses, and offer objections in a manner consistent with the informal nature of the conference. No participant should become unreasonably contentious or adversarial.

g. A written summary of the conference must be prepared and maintained by the school.

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*If the student and/or parent are absent, the principal shall so indicate in his/her conference notes, describe efforts by school officials to ensure their presence, and proceed with the conference. The parent shall be informed in writing that the conference was conducted on the scheduled date and of any decision reached at the conference.

h. The principal shall notify the parent in writing of his/her decision. This letter shall state whether the suspension was justified and the basis for the decision, and, where necessary, make further recommendations.

i. If the principal determines that the suspension is not justified, the student must be returned to school immediately and all records relating to the suspension must be expunged.

j. The suspended student is to remain on the register of his/her school and shall not be marked absent during the period of suspension. Appropriate notation of the suspension should be recorded in a manner that will permit expungement, when necessary.

k. A student may not be transferred to another school as a result of a principal's suspension.

l. All students must be reinstated no later than the sixth school day following the suspension regardless of whether a suspension conference has been held.

12. Reporting Requirements

At the end of every attendance reporting period of the school year, each principal will send the following information to the superintendent:

The name, grade, gender and racial/ethnic background of each suspended pupil;
The reason(s) for suspension;
Date suspended;
Date of principal's conference;
Date of pupil's return to class; and
Number of school days suspended.

B. Superintendents' Suspension

A superintendent's suspension may result in a period of suspension that exceeds five school days. Prior to requesting such a suspension, the principal shall consult the Discipline Code.

1. Superintendents' suspensions must be sought when students engage in any of the following behavior:

   a. Using any weapon, as defined below in Categories I and II, to inflict injury or to attempt to inflict injury upon school personnel, students or others:

      Category I

      - Firearm, including pistol and handgun, silencers and electronic dart and stun gun;
      - Shotgun, rifle, machine gun, or any other weapon which simulates or is adaptable for use as a machine gun;
      - Air gun, spring gun, or other instrument or weapon in which the propelling force is a spring or air, and any weapon in which any loaded or blank cartridge may be used (such as a BB gun);
      - Switchblade knife, gravity knife, pilum ballistic knife and cane sword (a cane that conceals a knife or sword);
      - Dagger, stilleto, dirk, razor, and other dangerous knives;
      - Billy club, blackjack, bludgeon, chucka stick, and metal knuckles;

- Sandbag and sandclub;
- Sling shot (small, heavy weights attached to or propelled by a thong) and slungshot;
- Martial arts objects including kung fu stars, ninja stars, nin chucks, and shirkens;
- Explosives, including bombs, and firecrackers, and bombshells.

Category II

- acid or deadly or dangerous chemicals;
- imitation gun;
- loaded or blank cartridges and other ammunition;
- any deadly, dangerous, or sharp pointed instrument which can be used or is intended for use as a weapon (such as scissors, nail file, broken glass, case cutter, chains, wire).

b. Possessing any weapon, as defined in Category I above.

c. Using force against or inflicting serious injury against school personnel.

d. Using extreme force or inflicting serious injury upon students or others.

e. Selling or distributing illegal drugs or controlled substances.

2. Superintendents' suspensions should be sought when students engage in the following behavior:

   a. Possessing any weapon as defined in Category II above.*

   b. Engaging in behavior which creates a substantial risk of or results in injury (for example, committing arson or causing a riot).

   c. Possessing or using illegal drugs or alcohol.

   d. Possessing or using controlled substances without appropriate authorization.

3. Superintendents' suspensions should also be sought when a student engages in behavior not listed above but which presents a clear and present danger to himself or the school community or which is so disruptive as to prevent the orderly operation of the school (e.g., theft, vandalism).

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*Before requesting a suspension for the possession of an article listed in Category II above, for which a purpose other than the infliction of physical harm exists, e.g., a nail file, the principal shall consider whether or not there are mitigating factors present. Where the facts indicate that the student in possession has the intention of using the article to inflict physical or mental harm, the principal shall seek a superintendent's suspension, summon the police and follow the procedures listed below. Where there are mitigating factors present, the superintendent shall consider these factors in determining whether or not a superintendent's suspension is warranted.

4. Police Involvement

When a student is believed to have committed a crime or is found in possession of a weapon prohibited in Category I, illegal drugs or controlled substances, the police must be summoned. The school shall obtain the name, shield number and command of the responding police officer(s). In addition, the school should notify the Division of School Safety.

Where a student is arrested the principal shall notify the parent immediately. If the parent cannot be reached, the principal shall request of the arresting officer that a member of the school staff accompany the student and remain with the student for a reasonable length of time or until the parent or guardian assumes parental responsibility. If permission to accompany the student is denied, a member of the staff shall follow immediately to the place the student is taken. The staff member who accompanies or follows the student to the precinct must be someone who was not involved in the incident leading to the arrest. (See Chancellor's Regulation A-412.)

If an arrest is made for possession of weapons, controlled substances or illegal drugs, the police will voucher the item. The school must obtain a copy of the Police Department voucher (property clerk's invoice.) If the police do not take custody of the item the principal or his/her designee must notify the appropriate Borough Office of the Division of School Safety to have the item properly vouchered. Once the item has been vouchered, the school should obtain a copy of the

Envelope Voucher receipt. In cases involving a weapon, the Property Recovery Unit of the Division of School Safety is responsible for having the weapon available at a superintendent's suspension hearing. School officials shall notify this unit of the date of the hearing and, if the hearing is postponed, of the rescheduled date.

5. Pre-suspension Investigation

Where a student engages in conduct for which a superintendent's suspension may be warranted, it is the responsibility of the principal or his/her designee to take the following investigative steps:

a. Question the victim and any other witnesses to the incident and obtain their signed written statements.

b. Question the accused student and inform him/her of the misconduct of which he/she is being accused.

c. Provide the accused student with an explanation of the evidence and an opportunity to present his/her side of the event, if it is feasible to do so.

d. Provide the accused student with an opportunity to prepare a signed, written statement.

6. When a principal believes that a superintendent's suspension is warranted, he/she shall telephone the appropriate superintendent, provide complete details of the student's behavior, including mitigating circumstances, if any, and request a superintendent's suspension.

7. Only a superintendent, or in his/her absence, his/her designee, may authorize a superintendent's suspension.

8. Prior to authorizing a suspension for a student in grades K-3, the superintendent must consider what other disciplinary, guidance and intervention measures the school has explored.

9. A superintendent may not authorize a suspension until he/she has been assured that the principal has conducted the preliminary investigation described in (5) above, or is provided with an explanation as to why it was not feasible to do so.

10. A superintendent's suspension should be effected on the day of the alleged misbehavior, whenever possible, or within a reasonable time thereafter. The student shall remain in school, under supervision, until either the arrival of the student's parent or until the close of the student's school day.

11. Notice

The superintendent shall give immediate written notice of the suspension to the student's parent.

Such notice shall be provided by personal delivery, express mail delivery or any other equivalent means reasonably calculated to assure receipt of such notice within 24 hours of the suspension. The notice shall provide a description of the incident which resulted in the suspension and advise the parent that a suspension hearing will be scheduled within five school days of the date of the suspension. The superintendent shall also give immediate notice of the suspension to the parent by telephone.

On the same day as the suspension, the superintendent must also post by both certified and regular mail a letter informing the parent of:

(a) the fact that the student has been suspended;

(b) the specific reasons for the suspension including date, time and place of the behavior giving rise to the suspension;

(c) the fact that the student should not return to school during the suspension period;

(d) the date, time and place (not more than five school days from the date of the suspension) for the superintendent's hearing;

(e) the right to view and obtain in person at the school, a copy of the student's records, including the anecdotal, permanent and guidance records and all written statements relating to the incident which lead to the suspension;

(f) the fact that the student's records, including written statements about the incident leading to the suspension, may be introduced into evidence;

(g) the fact that the student's permanent, cumulative guidance and ancedotal records may not be used as evidence to prove the charges but will be considered in determining the student's placement if the charges are upheld;

(h) the fact that pursuant to Chancellor's Regulation A-820, a parent has the right to be notified of any derogatory information in his/her child's student records. If a parent seeks to challenge an entry in his/her child's records which may be used by the superintendent in making a dispositional decision because the parent was not notified of the entry, the superintendent will make a preliminary decision with respect to the contested entry as part of the suspension decision. This is not intended to substitute for the appeal procedure outlined in Chancellor's Regulation A-820;

(i) the right to request an adjournment of the hearing but that such an adjournment will result in the student's continued suspension from the student's home school;

(j) the fact that if the parent's dominant language or mode of communication is not English, the parent may bring a translator to translate the proceedings;

(k) the right to, and the advisability of, representation by an advisor or counsel;

(l) the fact that if the parent intends to bring an advisor or attorney to the hearing, the parent must notify the superintendent at least 24 hours prior to the hearing and that if the parent fails to do so and the school determines that it will adjourn in order to have a staff advisor present, the adjournment will be charged to the student and the student will remain out of the student's home school pending the new hearing date;

(m) the right to question witnesses, present witnesses and documentary evidence on the student's behalf and obtain subpoenas from the superintendent or his/her designee;

(n) the student's right to reinstatement or right to transfer with the consent of his/her parent to an equivalent instructional program on the sixth school day following the suspension, if the hearing is not originally scheduled to be held within five school days of the suspension, or if the hearing is originally scheduled within five school days of the suspension, but is continued or postponed by an employee of the Board of Education;

(o) the range of possible dispositions if the charges are upheld;

(p) the right to classwork and homework assignments;

(q) the right to obtain from the school a full written description of a suspended student's rights;

(r) the right to obtain a copy of the record of the hearing;

(s) the fact that the superintendent will issue a written decision within five days of the superintendent's suspension hearing; and

(t) the right to appeal the suspension decision and an explanation of the appeal procedures.

A list of community agencies offering free legal assistance and a copy of procedures for appealing any actions which have been taken with respect to the suspension, must be enclosed with the letter.

12. The superintendent must ensure that a suspended student is provided with classwork and homework assignments during the suspension period. Suspended students may not be academically penalized and must be permitted to take or make-up examinations that are administered during the suspension period, in accordance with the guidelines described in Section II-A(10) of this Regulation.

13. The suspended pupil will remain on the register of the school and shall not be marked absent during the period of suspension. Appropriate notation of the suspension should be recorded in a manner that will permit expungement, when necessary.

14. A suspended pupil who moves to another school district within the City during his/her suspension shall immediately be placed on the register of the school serving his/her new residence and his/her suspension shall be continued for the specified time. The hearing will take place in the district from which the student was suspended.* The superintendents of the suspending district and the new district are jointly responsible for placement.

15. Superintendent's Hearing

    a. A superintendent's suspension hearing is a formal proceeding and must be scheduled within five school days of the suspension. If any witnesses are reluctant to appear, the superintendent, or his/her designee, may issue subpoenas requiring them to do so. Witnesses with direct and personal knowledge of the incident should appear at the hearing. A formal hearing may not be conducted without a complaining witness. While written statements and affidavits are admissible, oral testimony on the same matter must be given greater weight unless the superintendent determines, based on all the evidence adduced at the hearing, that the oral testimony is not entitled to such weight. If oral testimony is not given greater weight the decision shall specify the basis for not doing so.

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*Appeals shall be taken to the suspending district in accordance with Section III-B of this Regulation.

b. Both the school and the suspended student and/or his/her parent may present witnesses, offer statements, and question all witnesses involved in the incident for which the student has been suspended. Witnesses should be questioned separately and with no other witness present. The principal must permit school personnel wishing to testify on behalf of the student to attend the hearing. Whenever feasible, parental consent should be obtained by school officials before a student witness is permitted to testify. If parental consent is not obtained, the superintendent may authorize the issuance of a subpoena and where the subpoena is issued, the parent must be notified that the student will be called to testify at the hearing. Where the parent of the suspended student wishes to subpoena a student or Board employee, the parent must contact the superintendent. The parent is responsible for serving subpoenas on the witnesses for the suspended student, except where the witness is a Board employee or student.

c. School officials are responsible for proving by direct or circumstantial evidence the student's involvement in the incident(s) charged. No finding that the student committed the act(s) charged may be based exclusively on hearsay evidence.

d. A formal hearing must be held within five school days of the suspension.* If the student is not offered such an opportunity, or if the hearing is continued or postponed at the request of an employee of the Board of Education, the student shall be reinstated on the sixth school day to his/her school pending the rescheduled hearing or, with the consent of the parent, transferred to an equivalent instructional program. If the student's parent requests an adjournment, the student shall be offered an opportunity for a hearing within five school days of the request, unless the parent requests a longer period. When the parent's request for an adjournment is granted, the student shall remain out of the student's home school pending the rescheduled hearing.

e. Where a student is represented at the hearing by an attorney or advocate, the school has the option of having a staff advisor present the school's case. In such cases, the staff advisor may not testify as a witness.

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*If the student and parent, after appropriate notice, do not appear at the hearing, the superintendent may exercise the option to hold the hearing on the scheduled date. If the student and/or parent or guardian are absent, the superintendent shall note their absence on the record, describe efforts by school officials to ensure their presence, and proceed with the hearing. The parent shall be informed in writing that the hearing was conducted on the scheduled date and of any decisions reached at the nearing.

f. A tape recorded or verbatim stenographic record of the hearing must be kept.

g. A copy of the student's permanent, cumulative guidance, and anecdotal records, as well as all other written material relating to the incident for which the student was charged (including witness statements), shall be made available to the parent or representative prior to the hearing upon request made by the parent or representative in person at the school. At the beginning of the hearing, the parent or representative shall be provided with a complete set of the student's records for review and comparison with the records previously obtained from the school, if any, and advised that records not made available may not be offered into evidence by the school on that date. If the school requests an adjournment, and the student is returned to school as provided for in paragraph (d) above, and the records are provided to the parent prior to the adjourned date, the records may be offered into evidence on the adjourned date. The student's permanent, cumulative guidance, and anecdotal records may be introduced into evidence for dispositional purposes only. These records may not contain information relating to the incident for which the student was suspended unless such information was introduced into evidence at the suspension hearing.

h. School officials shall not interfere with a suspended student's efforts to carry out his/her due process rights, including access to records and witnesses.

16. Disposition

a. If the superintendent determines that the suspension should not be upheld, he/she must arrange for the student's immediate return to his/her school and for all records relating to the student's suspension to be expunged.

b. If the superintendent upholds the suspension, the superintendent may select the dispositional options set forth in (1) - (4) below. In selecting a disposition, the superintendent must review the student's prior record and the circumstances giving rise to the offense. Consideration must also be given to the student's age and maturity.

1. For ninth grade students only, extended suspension for one year* if the charges for engaging in any of the following behaviors are upheld:

(a) Possessing any weapon as defined in Category I, or possessing any weapon as defined in Category II with the intent to inflict physical or mental harm;

(b) Using any weapon, as defined in Categories I and II, to inflict injury or to attempt to inflict injury upon school personnel, students, or others;

(c) Using force against or inficiting serious injury upon school personnel;

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* This disposition may be utilized only if alternative education is provided at an alternative instruction site.

(d) Using extreme force against or inflicting serious injury upon students or others;

(e) Engaging in behavior which creates a substantial risk of or results in injury (for example, committing arson or causing a riot);

(f) Selling or distributing illegal drugs or controlled substances;

(g) Possessing or using illegal drugs or alcohol;

(h) Possessing or using controlled substances without appropriate authorization.

(The superintendent's decision letter following the suspension hearing must specify a date no less than 30 calendar days and no more than 90 calendar days following the effective date of the extended suspension after which the student may file a petition for early readmission. See Section II-B(17) below.)

2. For students in grades 4 to 9 only, continued suspension for a fixed period of 6 to 30 school days,* at the expiration of which the student is either reinstated or

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* This disposition may be utilized only if alternative education is provided at an alternative instruction site. Suspending schools are responsible for providing homework assignments to students placed on continued suspension.

transferred. (The superintendent's decision letter following the suspension hearing must specify the length of the suspension and the school to which the student will be assigned at the termination of the suspension period.)

3. Transfer. Every effort shall be made to ensure that the student's educational program at the school to which he/she is transferred is coordinated with the program at the original school. To the maximum extent possible, the transfer should result in a minimal disruption of the student's education and no loss of courses or academic credit.

4. Reinstatement.

c. Records Disposition

The superintendent's decision must also contain a disposition with respect to the student's records.

1. In cases where the charges are sustained, the superintendent may select one of the following dispositions:

    (a) Notation of the suspension on the student's permanent record.

    (b) Notation on the student's record and expungement of the record of the suspension upon graduation or departure from the New York City public school system, with the provision that the record be sealed and kept apart from the student's school record and be used solely for dispositional purposes if the student is subsequently suspended by a superintendent and the charges are sustained.

(c) Notation on the student's record and expungement of the record of the suspension from the student's record upon the student's graduation or departure from the New York City public school system, provided there are no further disciplinary problems resulting in a superintendent's or principal's suspension that is ultimately sustained.

(d) Expungement of the record of the suspension.

2. In all cases, if the charges against the student are not sustained at the superintendent's hearing, all records relating to the suspension must be immediately expunged.

d. Notice of Disposition

1. The superintendent shall give notice of his/her decision to the student's parent by either telephone or telegram within two school days of the suspension hearing. The superintendent's decision shall be effective as soon as feasible, but no later than five school days after the hearing. Additionally, a full report of the superintendent's findings and disposition must be mailed to the student's parent within five

school days of the hearing. Unless the parent or student agree otherwise, no disposition involving a change of school may be imposed until the superintendent has issued this written decision.

2. In cases where the superintendent imposes a continued suspension or an extended suspension for one year, the superintendent's letter must specify the alternative instruction site to which the student must report.

3. In all cases where the superintendent imposes an extended suspension for one year, the superintendent's letter must specify a date after which the student may file a petition for early readmission (See Section II-B(17) below).

17. Petitions for Students Placed on Extended Suspension for One Year to Apply for Early Readmission

All students suspended for one year may petition the superintendent for early readmission to a regular New York City public school after the date specified in the superintendent's decision letter. The date specified in the superintendent's decision letter may fall no less than 30 calendar days and no more than 90 calendar days following the effective date of the extended suspension. For students suspended on or after May 1, the months of

July and August are excluded from the calculation of the 30 to 90 day period.

a. Procedure

(1) All petitions for early readmission must be in writing and must be filed with the superintendent. The petition should include evidence indicating that the student no longer poses a danger to the safety, health, or welfare of the school community. The petition should include the following information:

- The reasons the student is seeking early readmission.
- A description of the student's activities during the suspension period.
- The student's educational plans if readmitted.
- A written statement from the student explaining what he/she has learned from the experience of being suspended.
- Character references from non-family members.
- A written assurance from the student that he/she has read the school's Discipline Code and that he/she will not violate the Discipline Code.

(2) Upon receipt of the petition, the superintendent shall notify the parent of the date, time and place of the readmission conference. This conference must be scheduled no later than 10 school days following receipt of the petition.

(3) The readmission conference is not a formal proceeding. It is an opportunity for the student to demonstrate his/her readiness to be readmitted to a regular school.

(4) The student and/or parent may bring any additional material to the conference that will better enable the superintendent to determine the student's readiness for readmission. The parent may be accompanied by an advisor.

b. Decision on Petition

(1) In making his/her decision, the superintendent shall also review the student's records, and where applicable, consult with school officials at the alternative education site to determine the student's progress since the time of the suspension.

(2) The superintendent shall issue a written decision specifying the basis for his/her decision within 10 school days of the conference. If the superintendent decides to readmit the student, the letter shall also specify the school to which the student should report and the date on which he/she should report there. Arrangements

shall be made for students who are readmitted to report to their new schools as soon as possible. If the petition is denied, the superintendent shall specify a new date after which another petition for readmission may be filed.

(3) Petitions for readmission granted after December 1, and May 1, will not necessarily result in an immediate change of placement. The superintendent, in his/her discretion, will determine whether it is educationally appropriate for the student to be readmitted immediately or whether the student should be readmitted at the beginning of the following semester.

(4) The superintendent's letter must also advise the parent that he/she may appeal the decision made on the readmission petition in accordance with the procedures and time frames set forth in Section III-B and III-C.

c. All students who are not readmitted on petition or who do not file a petition for readmission will be placed in schools by the superintendent at the termination of their one year extended suspension period. The superintendent must advise the student of his/her placement within 7 days of the termination of the suspension period. The parent may appeal this placement decision in accordance with the procedures and time frames set forth in Section III-B and III-C.

III. APPEAL PROCEDURES FOR STUDENT SUSPENSION

Appeals from a suspension, or any action resulting from a suspension including readmission decisions, may be filed by a student or by a student's parent or by a representative acting on their behalf. All appeals must be filed in writing.

The student or his/her parent may request temporary relief from the Chancellor concerning the student's suspension at any time pending final determination of the appeal. Such request must be filed in writing to the Chancellor and also to the Office of Legal Services, Room 920, 110 Livingston Street, Brooklyn, New York 11201.

A. Appeals from Principal Suspensions

Appeals from a principal's suspension must be filed within ten schools days from the suspension. All appeals must set forth the grounds for the appeal and the relief requested. Appeals shall be taken in the following sequence:

a. to the Community Superintendent;

b. to the Community School Board (within twenty school days from the superintendent's decision);

c. to the Central Board of Education (within twenty school days from the community school board's decision).

Where a student files an appeal of a principal's suspension with the superintendent, the principal must file a statement which sets forth the grounds for his/her decision within five school days of the filing of the appeal papers.

B. Appeals from Superintendent Suspensions

Appeals from a superintendent's suspension must be filed within twenty school days from the date of the decision or ten school days from receipt of the record of the hearing, whichever is later. Appeals shall be taken in the following sequence:

a. to the Community School Board;

b. to the Central Board of Education.

C. Decisions on Appeals

The reviewing authority shall issue a written statement outlining the basis for its decision within the time periods specified below:

a. the Community Superintendent - within five school days following the filing of the principal's statement of the grounds for his/her decision;

b. the Community School Board - within fifteen working days following the complete filing of the appeal record;

c. the Central Board of Education - within fifteen working days following the complete filing of the appeal record.

The student's parent shall be informed in writing of the decision on appeal and the reasons for the decision. If the reviewing authority finds that the suspension was not justified, the student is entitled to be returned to the school from which he/she was suspended and all records pertaining to the suspension and the proceedings related to it must be expunged from the student's record.

IV. REPORTING REQUIREMENTS

A. At the end of each attendance reporting period, the superintendent will forward to the Office of Educational Data Services a report on student suspensions, including the following:

1. The number of superintendent's suspensions, and for each suspension: grade; gender; racial/ethnic background; reason(s) for suspension; duration; and disposition.
2. The number of principals' suspensions for all schools in the district and the aggregate total breakdown of these suspensions by: grade; gender; racial/ethnic background; reason(s) for suspension; and duration.

B. Juvenile Reports

When the record of a suspension is expunged, but a Juvenile Report has been issued against a student who committed certain proscribed acts which were the basis for the suspension, the authority who expunges the suspension must undertake the following procedure:

1. Send a letter to the Commanding Officer of the Youth Services Division of the New York City Police Department, 280 Broadway, Room 604, New York, New York, 10007 stating that the suspension and the charges against the student have been expunged;
2. Request that the Juvenile Report be expunged; and
3. Request written confirmation that the Juvenile Report has been expunged.

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

No.: A-441

Page: 1 of 39

Issued: 10/1/93

Category: STUDENTS

Subject: SUSPENSION OF OTHER THAN SPECIAL EDUCATION HIGH SCHOOL STUDENTS

ABSTRACT

This Regulation governs the suspension of regular education high school students only. Suspension of students in the community school districts continues to be governed by Chancellor's Regulation A-440. The procedures for the suspension of special education students are described separately in Chancellor's Regulation A-445. This Regulation supersedes Chancellor's Regulation A-430, Carrying Weapons in Schools, only with respect to regular education high school students.

This Regulation applies to prohibited actions of students in school, during school hours, before and after school, while on school property, while traveling on vehicles funded by the Board of Education, at all school-sponsored events and on other than school property, which negatively affect the educational process or endanger the health, safety, morals or welfare of the school community.

This Regulation updates and clarifies suspension procedures and carefully defines the school officials who may authorize suspensions. It delineates each step to be followed in suspension proceedings and sets forth the due process rights of students, as required by State law and the Bylaws of the Board of Education. This Regulation also expands the range of dispositional options that are available where a student has been suspended by the superintendent to include extended suspension for one calendar year and continued suspension for a specified period of six to 30 days.

Guidance considerations and alternative techniques that should be used by school personnel in place of disciplinary actions are also addressed herein. School officials must consult the Discipline Code in

determining what level of discipline to impose. School officials are responsible for sharing the information contained herein with students, staff, and parents.

This Regulation does not govern transfers resulting from cumulative behavioral and/or academic problems. Such transfers must be effected in accordance with the procedures described in Chancellor's Regulation A-450, Involuntary Transfers.

I. Prevention Procedures

A. General Considerations

When a student engages in disruptive behavior, school officials shall explore techniques to assist in resolving the behavioral problem. School personnel should develop plans for alleviating a student's problems and discuss these alternatives with the student and his/her parent.*

These plans might include the use of alternative instructional materials and/or approaches, alternative classroom management techniques, remedial services, alternative class placement, guidance support, and services to address personal and family circumstances. If after appropriate alternative techniques have been considered, a principal suspects that a student's difficulties may be a manifestation of a handicapping condition which prevents the student from benefitting from general education, the principal shall immediately refer the student to the School Based Support Team or Committee on Special Education. The preventive efforts taken are to be recorded in the student's records.

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*The term "parent," whenever used in this Regulation, shall mean the student's parent(s) or guardian(s), or any person(s) or agency in a parental or custodial relationship to the student, or the student, if he/she is an emancipated minor or has reached 18 years of age.

B. Principal's Guidance Conference

Where a student exhibits a behavior problem, school officials shall encourage parental input in exploring various alternatives to meet the student's needs.

1. Guidance conferences attended by the principal, a guidance counselor, the student's parent, and one or more of the student's teachers, should be held with the student where appropriate. The conference should be conducted as a guidance session to assist the student in resolving the problem. Parents should be advised of their right to bring advisors to these conferences.

2. The guidance conference may not be used as a vehicle for determining whether or not a student should be suspended.

3. The principal should notify the parent by letter* that he/she should attend the guidance conference. The following is a suggested format:

   "I am very anxious to meet with you to discuss a serious incident involving your child (Name). Would you please come in to see me on (Date-Time-Place) so that we can plan ways to resolve this matter. You may bring an advisor to this conference."

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*Any letter sent in connection with this Regulation shall be sent, where feasible, in the parent's dominant language or mode of communication. In those cases where it is not possible to obtain a full translation of the letter, the letter should be sent in English with an attached notice in the parent's dominant language or mode of communication stating the following: "The attached letter contains important information about your child. Please have it translated as soon as possible."

II. Suspension Procedures

Suspensions fall into two categories: (1) principals' suspensions; and (2) superintendents' suspensions. Suspension is a serious step and school officials should use appropriate alternative measures to avoid it.

A. Principals' Suspensions

1. The principal shall have power to suspend a student when the principal determines that a student's overt behavior presents a clear and present danger of physical injury to the student, other students or school personnel, or prevents the orderly operation of classes or other school activities. Prior to suspending a student, the principal shall consult the Discipline Code.

2. Only the principal, or in the principal's absence, the school official designated as "acting principal," may authorize a principal's suspension.

3. A principal may suspend a student from one to five days, but in no case in excess of five school days. Not all behavior warrants a full five day suspension. A student may not be suspended twice for the same incident. A student cannot be suspended by a principal more than twice in one school year.

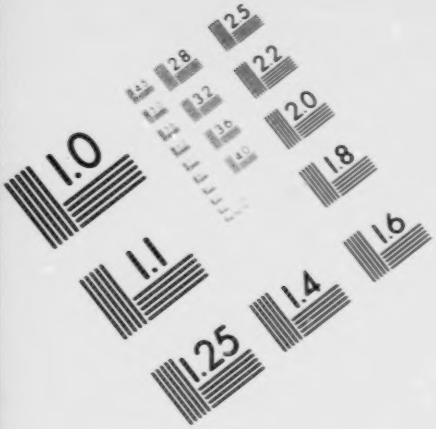
4. When a principal believes that suspension may be warranted, the student shall be removed from classes and informed of the charges against him/her. If the student denies the charges, the principal shall give the student an explanation of the evidence and an opportunity to present his/her side of the event, if it is feasible to do so.

5. If the principal decides that suspension is not warranted, the student shall be returned to class.

6. If the principal decides that suspension is warranted, he/she shall detain the student in school under supervision until either the arrival of the student's parent or until the close of the student's school day.

7. The principal shall give immediate written notice of the suspension to the student's parent. Such notice shall be provided by personal delivery, express mail delivery or any other equivalent means reasonably calculated to assure receipt of such notice within 24 hours of the suspension. The notice shall provide a description of the incident which resulted in the suspension and advise the parent that a suspension conference will be scheduled within five school days of the date of the suspension. The principal shall also give immediate notice of the suspension to the parent and superintendent by telephone. The principal must inform the parents of the location at the school where he/she can pick up the student. Every effort shall be made to arrange a suspension conference with the parent at a mutually acceptable date and time. The suspension conference shall be scheduled as soon as possible, but in no event, later than five school days from the date of the suspension.

8. The principal shall also send the parent a letter by both certified and regular mail, which shall be mailed on the day of the suspension. A copy of the letter must be forwarded to the superintendent. The letter must inform the parent: (a) that the student is suspended and is not to return to school during the suspension period; (b) the specific reason(s) for the suspension; (c) that the parent's presence is required at a suspension conference to discuss the suspension; (d) the date, time, and place (no more than five school days from the date of the suspension) of the conference; and (e) that if the parent's dominant language or mode of communication is not English and a translator is required, the



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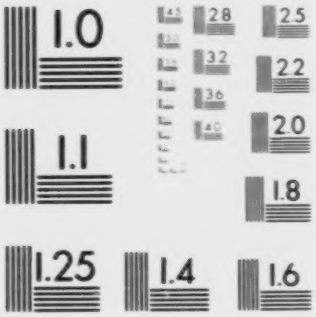

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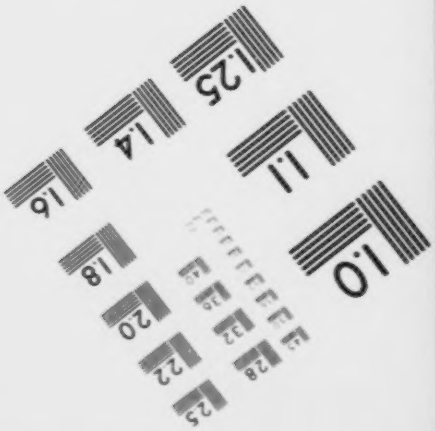

parent should bring a translator to the suspension conference. The letter must also provide a statement of the student's rights, including the right to: (1) question persons involved in the incident for which the student has been suspended; (2) request and present witnesses and documentary evidence; (3) be accompanied by up to two advisors who may be attorneys or advocates; and (4) be returned to school at the end of the suspension period. A copy of the Bill of Student Rights and Responsibilities, K-12 and a copy of the procedures for appealing any actions which have been taken with respect to the suspension must be enclosed with the letter.

9. Students may not be academically penalized* during the suspension period. Students must be provided with alternative instruction during the suspension period. Accordingly, all classwork and homework assignments must be sent to the student's home during the suspension period. Students must be permitted to take any City-wide or State examinations that are administered during the period of their suspensions for which no make-up examination is permitted by the testing authority, as well as to make-up school examinations which may affect their academic records.

10. Principal's Suspension Conference

The suspension conference presents an opportunity for parents, students, teachers, and school officials to: (1) assess the facts surrounding the incident for which a student was suspended; (2) determine whether or not the suspension was justified (3) devise collaboratively satisfactory solutions; and (4) prevent further disruption of the student's education.

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*An academic penalty, such as reduction of grade, may only be imposed as a disciplinary measure if the conduct for which a student was suspended is directly related to an academic activity (e.g., plagiarism or cheating on an examination). An academic penalty may not be imposed for absence during the suspension period.

The conference shall be conducted in accordance with the following procedures:

a. The school principal shall conduct the conference and may not delegate the responsibility to attend even if he/she was not present at the time of the suspension.

b. If the parent's dominant language or mode of communication is not English, the parent may bring a translator to translate the proceedings.

c. The conference will be held on the scheduled date unless the parent requests an extension of the date from the principal. If the new date requested falls more than five school days from the date of the suspension, the student must be reinstated no later than the sixth day following the suspension.

d. Every effort shall be made to secure the parent's attendance. However, if the student and/or parent, after appropriate notice, do not appear at the conference, the principal may exercise the option to hold the conference on the scheduled date without their attendance.*

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*If the student and/or parent are absent, the principal shall so state in his conference record, describe efforts by school officials to ensure their presence, and proceed with the conference. The parent shall be informed in writing that the conference was conducted on the scheduled date and of any decisions reached at the conference.

e. The conference is not a formal hearing and should not become adversarial. Rather, it is a guidance measure designed to maximize the student's educational development.

f. The parent and the principal each may bring no more than two persons to assist them in the conference, unless, by mutual consent, they agree to the participation of additional persons. Both parties may also present witnesses and offer statements and other documentary evidence. Although the additional persons brought by the parent may be attorneys or advocates, they may participate only as advisors. They may, like the student and parent, participate freely in the discussion, question all witnesses, and offer objections in a manner consistent with the informal nature of the conference.

g. A written summary of the conference must be prepared and maintained by the school.

h. The principal shall notify the parent in writing of his/her decision. This letter shall state whether the suspension was justified and the basis for the decision, and, where necessary, make further recommendations.

i. If the principal determines that the suspension is not justified, the student must be returned to school immediately and all records relating to the suspension must be expunged.

j. The suspended student is to remain on the register of his/her school and shall not be marked absent during the period of suspension. Appropriate notation of the suspension should be recorded in a manner that will permit expungement, when necessary.

k. The student may not be transferred to another school as a result of a principal's suspension.

l. All students must be reinstated no later than the sixth school day following the suspension regardless of whether a suspension conference has been held.

B. Superintendents' Suspensions

Superintendents' suspensions may result in periods of suspension that exceed five days. Prior to requesting such a suspension, the principal shall consult the Discipline Code.

1. Superintendents' suspensions must be sought when students engage in any of the following behavior:

   a. Using any weapon, as defined below in Categories I and II, to inflict injury or to attempt to inflict injury upon school personnel, students or others:

      Category I

      - Firearm, including pistol and handgun, silencers and electronic dart and stun gun;
      - Shotgun, rifle, machine gun, or any other weapon which simulates or is adaptable for use as a machine gun;
      - Air gun, spring gun, or other instrument or weapon in which the propelling force is a spring or air, and any weapon in which any loaded or blank cartridge may be used (such as a BB gun);
      - Switchblade knife, gravity knife, pilum ballistic knife, and cane sword (a cane that conceals a knife or sword);

- Dagger, stilleto, dirk, razor, and other dangerous knives;
- Billy club, blackjack, bludgeon, chucka stick, and metal knuckles;
- Sandbag and sandclub;
- Sling shot (small, heavy weights attached to or propelled by a thong), and slungshot;
- Martial arts objects including kung fu stars, ninja stars, nin chucks, and shirkens;
- Explosives, including bombs, and firecrackers, and bombshells.

Category II

- acid or deadly or dangerous chemicals;
- imitation gun;
- loaded or blank cartridges and other ammunition;
- any deadly, dangerous, or sharp pointed instrument which can be used or is intended for use as a weapon (such as scissors, nail file, broken glass, case cutter, chains, wire).

b. Possessing any weapon, as defined in Category I above.

c. Using force against or inflicting serious injury against school personnel.

d. Using extreme force or inflicting serious injury upon students or others.

e. Selling or distributing illegal drugs or controlled substances.

2. Superintendents' suspensions should be sought when students engage in the following behavior:

    a. Possessing any weapon as defined in Category II above.*

    b. Engaging in behavior which creates a substantial risk of or results in injury (for example, committing arson or causing a riot).

    c. Possessing or using illegal drugs or alcohol.

    d. Possessing or using controlled substances without appropriate authorization.

3. Superintendents' suspensions should also be sought when a student engages in behavior not listed above but which presents a clear and present danger to himself or the school community or which is so disruptive as to prevent the orderly operation of the school (e.g., theft, vandalism).

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*Before requesting a suspension for the possession of an article listed in Category II above, for which a purpose other than the infliction of physical harm exists, e.g., a nail file, the principal shall consider whether or not there are mitigating factors present. Where the facts indicate that the student in possession has the intention of using the article to inflict physical or mental harm, the principal shall seek a superintendent's suspension, summon the police and follow the procedures listed below. Where there are mitigating factors present, the superintendent shall consider these factors in determining whether or not a superintendent's suspension is warranted.

4. Police Involvement

When a student is believed to have committed a crime or is found in possession of a weapon prohibited in Category I, illegal drugs or controlled substances, the police must be summoned. The school shall obtain the name, shield number and command of the responding police officer(s). In addition, the school shall notify the Division of School Safety.

Where a student is arrested the principal shall notify the parent immediately. If the parent cannot be reached, the principal shall request of the arresting officer that a member of the school staff accompany the student and remain with the student for a reasonable length of time or until the parent or guardian assumes parental responsibility. If permission to accompany the student is denied, a member of the staff shall follow immediately to the place the student is taken. The staff member who accompanies or follows the student to the precinct must be someone who was not involved in the incident leading to the arrest. (See Chancellor's Regulation A-412.)

If an arrest is made for possession of weapons, controlled substances or illegal drugs, the police will voucher the item seized. The school must obtain a copy of the Police Department voucher (property clerk's invoice.) If the police do not take custody of the item, the principal or his/her designee must notify the appropriate Borough Office of the Division of School Safety to have the item properly vouchered. Once the item has been vouchered, the school should obtain a copy of the Envelope Voucher receipt. In cases involving a weapon, the Property Recovery Unit of the Division of School Safety is responsible for having the weapon available at a superintendent's suspension hearing. School officials shall notify this unit of the date of the hearing and, if the hearing is postponed, of the rescheduled date.

5. Pre-suspension Investigation

Where a student engages in conduct for which a superintendent's suspension may be warranted, it is the responsibility of the principal or his/her designee to take the following investigative steps:

- a. Question the victim and any other witnesses to the incident and obtain their signed written statements.
- b. Question the accused student and inform him/her of the misconduct of which he/she is being accused.
- c. Provide the accused student with an explanation of the evidence and an opportunity to present his/her side of the event, if it is feasible to do so.
- d. Provide the accused student with an opportunity to prepare a signed, written statement.

6. When a principal believes that a superintendent's suspension is warranted, he/she will telephone the appropriate superintendent, provide complete details of the student's behavior, including mitigating circumstances, if any, and request a superintendent's suspension.

7. A superintendent may not authorize a suspension until he/she has been assured that the principal has conducted the preliminary investigation described above, or the superintendent is provided with an explanation as to why it was not feasible to do so.

8. The suspension becomes effective only upon notification from the Review Office. A student shall not be told that he/she has been suspended by the superintendent until the principal or his/her designee has received such notification from the Review Office. The Review Office will also inform the school of the date, time and place of the suspension hearing.

9. A superintendent's suspension should be effected on the same day as the alleged misbehavior, whenever possible, or within a reasonable time thereafter. The student shall remain in school, under supervision, until either the arrival of the student's parent or until the close of the student's school day.

10. The superintendent must ensure that a suspended student is provided with alternative instruction during the suspension period (see Section II-C).

11. Notice

The school shall give immediate written notice of the suspension to the student's parent. Such notice shall be provided by personal delivery, express mail delivery or any other equivalent means reasonably calculated to assure receipt of such notice within 24 hours of the suspension. The notice shall provide a description of the incident which resulted in the suspension and advise the parent of the alternative instruction site to which the student must report and that a suspension hearing will be scheduled within five school days of the date of the suspension. The school shall also give immediate notice of the suspension to the parent by telephone.

On the same day as the suspension, the superintendent must also post, by both certified and regular mail, a letter informing the parents of:

a. the fact that the student has been suspended;

b. the specific reasons for the suspension including the date, time and place of the behavior giving rise to the suspension;

c. the fact that the student should not return to school during the suspension period;

d. the date, time, and place (not more than five school days from the date of the suspension) of the superintendent's hearing;

e. their right to view and obtain in person at the school, a copy of the student's records, including the anecdotal, permanent and guidance records and all written statements relating to the incident which precipitated the suspension;

f. the fact that the student's records, including written statements about the incident leading to the suspension, may be introduced into evidence;

g. the fact that the student's permanent, cumulative guidance and anecdotal records may not be used as evidence to prove the charges but shall only be considered in determining the student's placement where the charges are upheld;

h. the fact that pursuant to Chancellor's Regulation A-820, a parent has the right to be notified of any derogatory information in his/her child's student records. If a parent seeks to challenge an entry in his/her child's records which may be used by the superintendent in making a dispositional decision because the parent was not notified of the entry, the superintendent will make a preliminary decision with respect to the contested entry as part of the suspension decision. This is not intended to substitute for the appeal procedure outlined in Chancellor's Regulation A-820;

i. the right to request an adjournment of the hearing but that such an adjournment will result in the student's continued suspension from school;

j. the fact that if the parent's dominant language or mode of communication is not English, the parent may bring a translator to translate the proceedings;

k. the right to, and the advisability of, representation by an advisor or counsel;

l. the fact that if the parent intends to bring an advisor or attorney to the hearing, the parent must notify the Review Office at least 24 hours prior to the hearing and that if the parent fails to do so and the school determines that it will adjourn in order to have a staff advisor present, the adjournment will be charged to the student and the student will remain out of the student's home school pending the new hearing date;

m. the names of adult witnesses and the student complaining witness, if any, who may be expected to testify on behalf of the school and a statement to the effect that this list is non-binding;

n. the right to question witnesses and to present witnesses and documentary evidence on the student's behalf and obtain subpoenas from the Hearing Office;

o. the student's right to reinstatement or, with the consent of his/her parent, the right to transfer to an equivalent instructional program on the sixth school day following the suspension if the hearing is continued or postponed by the Hearing Office or at the request of an employee of the Board of Education or is not originally scheduled to be held within five school days;

p. the range of possible dispositions if the charges are upheld;

q. the right to alternative instruction and the name and address of the outreach center to which the student shall report;

r. the right to obtain from the school a full writtten description of a suspended student's rights;

s. the right to obtain a copy of the record of the hearing;

t. the fact that the superintendent will issue a written decision within five days of the superintendent's suspension hearing; and

u. the right to appeal the suspension decision and an explanation of the appeal procedures;

A list of community agencies offering free legal assistance must be enclosed with this letter.

12. The suspended pupil will remain on the register of the school and shall not be marked absent during the period of suspension. Appropriate notation of the suspension should be recorded in a manner that will permit expungement, when necessary.

13. Stipulation to Charges

The parent of a suspended student may stipulate to the charges on the telephone. Parents who want to do so must contact the Hearing Office.

14. Superintendent's Hearing

a. A formal hearing must be scheduled within five school days of the suspension.* If the student is not offered such an opportunity, or if the hearing is continued or postponed at the request of an employee of the Board of Education or the Hearing Office, the student shall be reinstated on the sixth school day to his/her regular school program pending the rescheduled hearing or, with the consent of the parent, transferred to an equivalent instructional program. If the student's parent requests an adjournment, the student shall be offered an opportunity for a hearing within five school days of the request, unless the parent requests a longer period or the adjournment is granted pursuant to subparagraph (i) below. When the parent's request for an adjournment is granted, the student shall remain out of the student's home school pending the rescheduled hearing.

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*If the student and/or parent, after appropriate notice, do not appear at the hearing, the superintendent may exercise the option to hold the hearing on the scheduled date. If the student and/or parent are absent, the superintendent shall note their absence on the record, describe efforts by school officials to ensure their presence, and proceed with the hearing. The parent shall be informed in writing that the hearing was conducted on the scheduled date and of any decisions reached at the hearing.

b. Where a student is represented at the hearing by an attorney or advocate, the school has the option of having a staff advisor present the school's case. In such cases, the staff advisor may not testify as a witness.

c. Upon request made by a parent or his/her representative in person at the school, a copy of the student's permanent, cumulative guidance and anecdotal records, as well as all other written material relating to the incident for which the student was charged (including witness statements) shall be made available to the parent or representative prior to the date of the hearing. At the beginning of the hearing, the parent or representative shall be provided with a complete set of the student's records for review and comparison with records previously obtained from the school, if any, and advised that records not made available may not be offered into evidence by the school on that date. If the school requests an adjournment and the student is returned to school as provided for in paragraph (a) above, and the records are provided to the parent prior to the adjourned date, the records may be offered into evidence on the adjourned date.

d. School officials shall not interfere with a suspended student's efforts to carry out his/her due process rights, including access to records and witnesses.

e. A superintendent's suspension hearing is a formal procedure. School officials are responsible for proving by direct or circumstantial evidence the student's involvement in the incident(s) charged. No finding that the student committed the act(s) charged may be based exclusively on hearsay evidence.

f. If the parent's dominant language or mode of communication is not English, the parent may bring a translator to translate the proceedings.

g. If any witness is reluctant to appear, the hearing officer has the authority to issue subpoenas requiring him/her to do so (see II-B(14) below).

h. A formal hearing may not be conducted without a complaining witness. If a complaining witness refuses to appear, the suspension is to be dismissed due to insufficient evidence.

i. Both the school and the suspended student and/or his/her parents may present witnesses, offer statements and question all witnesses involved in the incident for which the student has been suspended.

j. The principal must permit school personnel wishing to testify on behalf of the student to attend the hearing. If the hearing officer subpoenas or requests on behalf of a student that a Board of Education employee attend the hearing and that employee fails to appear, the hearing officer shall determine whether the employee's presence can be obtained after a short recess. If it cannot, the parent shall be given the opportunity to request an adjournment, which shall not exceed two days unless the student is reinstated. A request for an adjournment shall be granted, and the hearing shall not proceed, unless the hearing officer finds that the missing witness' testimony would be immaterial or irrelevant. Such a finding and the reasons therefore shall be stated on the record. Prior to requesting an adjournment, the parent shall be informed whether the student will be reinstated pending completion of the hearing and decision of the superintendent. In exercising his discretion whether to reinstate the student, the hearing officer shall take into account several factors, including the nature of the charges against the student and the reason for the unavailability of the witness.

k. Notwithstanding the provisions of subparagraph (i) above, if the hearing officer determines that it is not possible to obtain the witness' attendance after a two day adjournment, the hearing shall proceed as originally scheduled unless the student is reinstated or the parent requests an adjournment; in either case the hearing shall be held within two weeks. The hearing officer shall inform the parent that, in the event the suspension is upheld, the parent will be advised in writing, if and when the witness becomes available, and that the parent may have the hearing reopened and witnesses recalled. The superintendent's decision after the initial hearing, as well as the decision after a reconvened hearing, may be administratively appealed.

l. Whenever feasible, parental consent should be obtained by school officials or the Hearing Office before a student witness is permitted to testify. If parental consent is not obtained, a subpoena may be issued. The Hearing Office shall also notify the parent that the student will be called to testify at the hearing.

m. The student's permanent, cumulative guidance, and anecdotal records may be introduced into evidence for dispositional purposes only; for such purposes, the records may not contain material relating to the underlying incident unless such material has otherwise been admitted into evidence.

n. While written statements and affidavits are admissible, oral testimony on the same matter must be given greater weight unless the hearing officer determines, based on all the evidence presented at the hearing, that the oral testimony is not entitled to such weight. If oral testimony is not given greater weight, the decision shall specify the reasons for this finding.

o. A tape recorded or verbatim stenographic record of the hearing must be kept.

15. Procedure for Subpoenaing Witnesses

Subpoenas may be obtained from the Hearing Office. Parents or their representatives who contact the school and request that witnesses be served with a subpoena shall be told to call the Hearing Office. Parents are responsible for serving subpoenas on persons they wish to testify on behalf of the student, except Board of Education employees and students.

Only the Hearing Office can authorize the service of a subpoena on staff and students. After the Hearing Office has given authorization, the subpoena will be served by the principal, or his/her designee. The following procedures shall be used when subpoenas are issued:

a. Student Witnesses

1. Subpoenas Issued at School's Request

(a) Where the testimony of a student is necessary to prove the school's case, the school must attempt to contact the parent of the student by telephone and inform the parent that:

(i) his/her child will be called to testify at the superintendent's hearing on behalf of the school;

(ii) a consent form will be mailed to the parent's house; and

(iii) if the consent form is not signed and returned within two days of the scheduled date of the hearing, the student will be served with a subpoena.

(b) The school should also notify the student that he/she will be called to testify at a superintendent's hearing as a witness for the school.

(c) Every effort should be made to obtain parental cooperation and consent. However, where the consent form has not been signed and returned within two days of the scheduled date of the hearing, a subpoena should be served on the student. The school shall attempt to notify the parent that his/her child will be served with a subpoena. However, the subpoena should be issued regardless of whether the parent has been reached.

(d) Only the Hearing Office can authorize the school's service of a subpoena. The school must notify the Hearing Office at least two (2) days prior to the scheduled date of the hearing that it wishes to subpoena a student. The school must furnish the Hearing Office with the name and address of the parent of the student. Once the school has received authorization from the Hearing Office, the subpoena may be filled out and served by a school official.

(e) The Hearing Office will send a mailgram to the student's parent, advising the parent that his/her child will be called to testify at the superintendent's suspension hearing on behalf of the school, and of the date, time and place of the hearing.

2. Subpoenas Issued at Student's/Parent's Request

(a) The Hearing Office will inform school officials of the name(s) of the student(s) who will be called to testify and the name of the party subpoenaing the witness(es).

(b) School officials must contact the parent of each student witness immediately by telephone to inform the parent that the child will be called to testify at the superintendent's suspension hearing and the name of the party subpoenaing his/her child as a witness. In addition, the parent shall be informed that his/her child will be served with a subpoena and that the parent will receive a mailgram from the Hearing Office.

(c) School officials shall make every effort to obtain parental cooperation and consent. However, the subpoena must be filled out and served by the school official whether or not the parent has been reached or has given consent. In addition, school officials must notify the student that he/she will be called to testify as a witness at the superintendent's suspension hearing and the name of the party subpoenaing him/her as a witness.

(d) Once the subpoena has been served, the school is to telephone the Hearing Office with the name and address of the parent(s) of each student witness subpoenaed.

(e) The Hearing Office will send a mailgram to the student's parent advising the parent that his/her child will be called to testify at the superintendent's suspension hearing, the name of the party subpoenaing the child as a witness and the date, time and place of the hearing.

b. Other Witnesses

The Hearing Office will also issue subpoenas for non-Board of Education persons on behalf of the parent or the school. Each party is responsible for serving subpoenas issued on its behalf.

16. Disposition

Once the hearing officer has made his/her findings of fact as to whether the student committed the act(s) charged, it is the responsibility of the superintendent to make a dispositional decision.

This decision will include a determination regarding the following: (1) whether to overturn or sustain the suspension; (2) the appropriate placement of the student; and (3) the appropriate disposition relating to the student's records. Unless the superintendent has reviewed the tape of the hearing, he/she is bound by the hearing officer's findings of fact. Mitigating circumstances, if they exist, must be considered in making a dispositional decision.

If the school fails to substantiate the charges, the suspension must be dismissed. The suspended student has the right to be reinstated immediately and to have all records relating to the suspension immediately expunged.

Where the hearing officer's findings of fact conclude that the student engaged in the conduct charged, the superintendent may elect to sustain or dismiss the suspension.

a. Placement

If the superintendent upholds the suspension, the superintendent may select the dispositional options set forth in (1) - (4) below. In selecting a disposition, the superintendent must review the student's prior record and the circumstances giving rise to the offense. Consideration must also be given to the student's age and maturity.

1. Extended suspension for one calendar year* if the charges for engaging in any of the

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*This decision must be made in consultation with the Executive Director of High Schools.

following behaviors are upheld:

(a) Possessing any weapcn as defined in Category I or possessing any weapon as defined in Category II with the intent to inflict physical or mental harm;

(b) Using any weapon, as defined in Categories I and II, to inflict injury or to attempt to inflict injury upon school personnel, students, or others;

(c) Using force against or inflicting serious injury upon school personnel;

(d) Using extreme force against or inflicting serious injury upon students or others;

(e) Engaging in behavior which creates a substantial risk of or results in injury (for example, committing arson or causing a riot);

(f) Selling or distributing illegal drugs or controlled substances;

(g) Possessing or using illegal drugs or alcohol;

(h) Possessing or using controlled substances without appropriate authorization.

(The superintendent's decision letter following the suspension hearing must specify a date no less than 30 calendar days and no more than 90 calendar days following the effective date of the extended suspension after which the student may file a petition for early readmission. See Section II-E below.)

2. Continued suspension for a fixed period of 6 to 30 school days, at the expiration of which the student is either reinstated or transferred. (The superintendent's decision letter following the suspension hearing must specify the length of the suspension and the school to which the student will be assigned at the termination of the suspension period.)

3. Transfer. Every effort shall be made to ensure that the student's educational program at the school to which he/she is transferred is coordinated with the program at the original school. To the maximum extent possible, the transfer should result in a minimal disruption of the student's education and no loss of courses or academic credit. The superintendent may authorize transfer to a part-time or non-diploma granting program only if the student has reached his/her seventeenth birthday.

4. Reinstatement.

b. Records Disposition

The superintendent's decision must also contain a disposition with respect to the student's records.

1. In cases where the charges are sustained, the superintendent may select one of the following dispositions:

    (a) Notation of the suspension on the student's permanent record.

(b) Notation on the student's record and expungement of the record of the suspension upon graduation or departure from the New York City public school system, with the provision that the record be sealed and kept apart from the student's school record and be used solely for dispositional purposes if the student is subsequently suspended by a superintendent and the charges are sustained.

(c) Notation on the student's record and expungement of the record of the suspension from the student's record upon the student's graduation or departure from the New York City public school system, provided there are no further disciplinary problems resulting in a superintendent's or principal's suspension that is ultimately sustained.

(d) Expungement of the record of the suspension.

2. In all cases, if the charges against the student are not sustained at the superintendent's hearing, all records relating to the suspension must be immediately expunged.

c. Notice of Disposition

1. The superintendent shall give notice of his/her decision to the student's parent within two school days of the suspension hearing and the decision of the superintendent shall be effective as soon as feasible, but no more tnan five school days

after the hearing. The notice shall be given by telephone or telegram. Additionally, a full report of the superintendent's findings and disposition must be mailed to the student's parents within five school days of the hearing. Unless the parents or students agree otherwise, no disposition involving a change of school may be imposed until the superintendent has issued this written decision.

2. In cases where the superintendent imposes a one year extended suspension, the superintendent's letter must specify a date on which the student and parent are to report to a guidance conference at which the appropriate alternative educational setting for the student will be determined. The parent may be accompanied by an advisor.

3. In all cases where the superintendent imposes a one year extended suspension, the superintendent's letter must specify a date no less than 30 calendar days and no more than 90 calendar days following the effective date of the extended suspension after which the student may file a petition for early readmission (See Section II-E below).

4. In all cases where the superintendent imposes a one year extended suspension and a petition for early readmission date of 60 days or more, the superintendent's letter must also indicate that the student is eligible to participate in a work-back program.

C. Alternative Instruction

1. Alternative instruction will be provided to students who have been suspended by the superintendent. During the period of suspension, students must report to the alternative instruction site to which they have been assigned.

2. Suspended students will be referred to Borough Outreach Centers for alternative instruction for the period of their suspensions. The school is responsible for providing homework assignments to suspended students while they are at the Borough Outreach Center.

3. Students who are placed on continued suspension for 6 to 30 days after their suspension hearings must continue to attend the Borough Outreach Center to which they have been assigned for the duration of their suspension.

4. A guidance conference will be scheduled for students placed on extended suspension for one year following their suspension hearings. At this guidance conference, the superintendent's designee will determine the appropriate alternative education site to which the student will be referred for the period of his/her one year extended suspension.

D. Appeal Procedures for Student Suspensions

Appeals from suspensions may be filed by a student or by a parent or by a representative acting on their behalf.

All appeals must be in writing and must set forth the grounds for the appeal and the relief requested.

1. Appeals from Principal's Suspension

Appeals from a principal's suspension must be filed within ten school days from the suspension.

Appeals shall be taken in the following sequence:

(1) first, to the Borough Superintendent;

(2) second, to the Chancellor* (within twenty school days from the Superintendent's decision); and

(3) third, to the New York City Board of Education (within twenty school days from the Chancellor's decision).

Where a student files an appeal of a principal's suspension with the superintendent, the principal must file a statement which sets forth the grounds for his/her decision within five school days of the filing of the appeal papers.

a. Decisions on Appeal

The reviewing authority shall decide an appeal from a principal's suspension on the basis of the appellant's written statement, the statement filed by the principal, the written decision of and any additional written statements submitted by the preceding reviewing authority, if any.

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*Appeals to the Chancellor shall be filed simultaneously with the Office of Legal Services, Room 920, 110 Livingston Street, Brooklyn, New York 11201.

The reviewing authority shall issue a written statement outlining the basis for its decision within the time period specified below:

(1) The Superintendent - within 5 school days following the filing of the principal's statement of the grounds for his/her decision.

(2) The Chancellor - within 15 working days following the completed filing of the appeal record.

(3) The New York City Central Board of Education - within 15 working days following the completed filing of the appeal record.

2. Appeals from Superintendent's Suspension

a. Interim Relief

The student or his/her parent may request a temporary decision from the Chancellor concerning the student's suspension at any time pending determination of an appeal. Such a request for interim relief must be filed in writing to the Chancellor and also to the Office of Legal Services, Room 920, 110 Livingston Street, Brooklyn, New York 11201.

b. Time for Filing Appeals

Appeals from a superintendent's suspension must be filed within twenty school days of the date of the decision or ten school days from receipt of the tape recording or hearing transcript, whichever is later.

c. Procedure

Appeals shall be taken in the following sequence:

(1) to the Chancellor;*

(2) to the New York City Board of Education.

d. Decisions on Appeal

The Chancellor and the New York City Board of Education shall decide an appeal of a superintendent's suspension on the basis of the appellant's written statement, the record of the hearing and the written decision of and any additional written statement submitted by the preceding reviewing authority.

The reviewing authority (Chancellor or New York City Board of Education) shall issue a written statement outlining the basis for its decision within 15 days following the completed filing of the appeal record.

If the reviewing authority finds that the suspension was not justified, the student must be returned to the school from which he or she was suspended, unless otherwise agreed to by the parent, and all records pertaining to the suspension and the proceedings related to it expunged from the student's record.

E. Petitions for Students Placed on Extended Suspension for One Year to Apply for Early Readmission

All students placed on extended suspension for one year, may petition the superintendent for early readmission to a regular New York City public school after the date specified in the superintendent's decision letter. The date specified in the superintendent's decision letter may fall no less than 30 calendar days and no more than 90 calendar days following the effective date of the one year extended suspension. For students suspended on or after May 1, the months of July and August are excluded from the calculation of the 30 to 90 day period.

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*Appeals to the Chancellor shall be filed simultaneously with the Office of Legal Services, Room 920, 110 Livingston Street, Brooklyn, New York 11201.

All students who receive a petition for early readmission date of 60 days or more are entitled to participate in work-back programs developed by the Division of High Schools.

1. Procedure

   a. All petitions for early readmission must be in writing and must be filed with the superintendent. The petition should include evidence indicating that the student no longer poses a danger to the safety, health, or welfare of the school community. The petition should include the following information:

      - The reasons the student is seeking early readmission.
      - A description of the student's activities during the suspension period.
      - The student's educational plans if readmitted.
      - A written statement from the student explaining what he/she has learned from the experience of being suspended.
      - Character references from non-family members.

- A written assurance from the student that he/she has read the school's Discipline Code and that he/she will not violate the Discipline Code.
- An evaluation of the student's performance in a work-back program, where applicable.

b. Upon receipt of the petition, the superintendent shall notify the petitioner of the date, time and place of the readmission conference. This conference must be scheduled no later than 10 school days following receipt of the petition.

c. The readmission conference is not a formal proceeding. It is an opportunity for the student to demonstrate his/her readiness to be readmitted to a regular high school.

d. The student and/or parent may bring any additional material to the conference that will better enable the superintendent to determine the student's readiness for readmission. The parent may be accompanied by an advisor.

2. Decision on Petition

a. In making his/her decision, the superintendent may also review the student's records, and where applicable, consult with school officials at the alternative instruction site to determine the student's progress since the time of the suspension. The superintendent may also consult with school officials regarding the student's performance in a work-back program.

b. The superintendent shall issue a written decision specifying the basis for his/her decision within

10 school days of the conference. If the superintendent decides to readmit the student, the letter shall also specify the school to which the student should report and the date on which he/she should should report there. Arrangements shall be made for students who are readmitted to report to their new schools as soon as possible. If the petition is denied, the superintendent shall specify a new date after which another petition for readmission may be filed.

c. Petitions for readmission granted after December 1, and May 1, will not necessarily result in an immediate change of placement. The superintendent, in his/her discretion, will determine whether it is educationally appropriate for the student to be readmitted immediately or whether the student should be readmitted at the beginning of the following semester.

d. The superintendent's letter must also advise the parent that he/she may appeal the decision made on the readmission petition.

3. Appeal of Superintendent's Decision Regarding Petition for Early Readmission

a. All appeals must be in writing and must be filed with the Chancellor within 20 calendar days of receipt of the superintendent's written decision.

b. The Chancellor shall issue a written decision specifying the basis for his/her determination within 15 calendar days of receipt of the appeal.

c. The parent may appeal the Chancellor's decision in writing to the Central Board of Education. This appeal must be filed within 20 calendar days of receipt of the Chancellor's written decision.

d. The Central Board of Education shall issue a written decision on the appeal within 15 working days following filing of the complete appeal record.

F. Readmission Following One Year Suspension

1. All students who are not readmitted on petition or who do not file a petition for early readmission will be placed in schools by the superintendent at the termination of their one year extended suspension period. The superintendent must advise the student of his/her placement within 7 days of the termination of the suspension period.

2. The parent may appeal this placement decision to the Chancellor. The appeal must be in writing and filed within 20 calendar days of receipt of the superintendent's decision. The Chancellor shall issue a decision within 15 working days following receipt of the appeal.

3. The parent may appeal the Chancellor's decision in writing to the Central Board of Education. The appeal must be filed within 20 calendar days of receipt of the Chancellor's decision. The Central Board of Education shall issue a decision within 15 working days following receipt of the appeal.

III. Reporting and Recording Procedures

A. Juvenile Reports

When the record of a suspension is expunged and a Juvenile Report has been issued against a student, the authority who expunges the suspension must comply with the following procedure:

1. Send a letter to the Commanding Officer of the Youth Services Division of the New York City Police

Department, 1 Police Plaza, Rm. 1100B, New York, New York 10007, stating that the suspension and the charges against the student have been expunged;

2. Request that the Juvenile Report be expunged; and

3. Request written confirmation that the Juvenile Report has been expunged.

B. Record Keeping

1. Principals' Reporting Requirements

At the end of every attendance reporting period of the school year, each principal will send the following information to the superintendent:

The name, grade, gender, and racial/ethnic background of each suspended pupil;
The reason(s) for suspension;
Date suspended;
Date of principal's conference;
Date of pupil's return to class; and
Number of school days suspended.

2. Superintendents' Reporting Requirements

At the each of each attendance reporting period, the superintendent will forward to the Office of Educational Data Services a report on student suspensions, including the following:

The number of superintendent's suspensions and for each suspension: grade; gender; racial/ethnic background; reason(s) for suspension; duration; and disposition; and

The number of principals' suspensions for all schools in the district and the aggregate total breakdown of those suspensions by: grade; gender; racial/ethnic background; reason(s) for suspension; and duration.

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

Category: Students
Subject: PROCEDURES FOR SUSPENSIONS OF SPECIAL EDUCATION STUDENTS

No.: A-445
Page: 1 of 10
Issued: 3/24/81

ABSTRACT

This Regulation replaces Regulation of the Chancellor A-445, dated October 1, 1979, Procedures for Suspension of Special Education Pupils. The Regulation covers students formally evaluated by School Based Support Teams (SBST's) or Committees on the Handicapped (COH's) and either receiving or awaiting provision of services from the Division of Special Education.

The Regulation addresses special conditions and procedures relating to particular students, who are defined in Section I below. It describes approaches to be employed when it is necessary to discipline these students and carefully defines the specific conditions under which they may be suspended and the school authorities who may authorize their suspensions. The Regulation delineates each step to be followed in suspensions involving these students and the protections which must be afforded to them during suspension proceedings, as required under the Federal Education for All Handicapped Children Act of 1975 (PL 94-142) and the State Education Law. These steps are described in detail in Section IV of the Regulation.

The Regulation also discusses guidance considerations and alternatives that are preferable to, and should be used in advance of, disciplinary actions such as suspensions.

I. SPECIAL EDUCATION STUDENTS DEFINED

For purposes of this Regulation, the following students are defined as "special education students" and are covered by all provisions of the Regulation: Students formally evaluated by SBST'S or COH'S and either receiving or awaiting provision of services from the Division of Special Education (DSE) in accordance with recommendations of SBST's or COH'S.*

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*Students receiving or awaiting provision of resource room services are covered by this Regulation; specific provisions affecting those students appear in Section IV(A)(2).

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

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II. SPECIAL CONDITIONS GOVERNING SUSPENSION OF SPECIAL EDUCATION STUDENTS

Students covered by this Regulation are offered certain protections in addition to those provided to other students by Regulation A-440.

Despite handicapping conditions, special education students may be suspended from participation in school activity, but only under emergency circumstances.

"Suspension" is defined as the temporary removal from school of a special education student for alleged misconduct which constitutes an emergency circumstance.

An "emergency circumstance" is defined as a major behavioral incident which presents a clear and present danger of injury to the student, other students, or school personnel, or which is so highly insubordinate or disorderly as to significantly impair the education of other students.*

Special education students may be suspended only under the emergency circumstances described in this Regulation. Special education students may not be suspended by a principal: (1) solely for a previous history of disruptive behavior; (2) more than twice during the school year; nor (3) twice consecutively. Additionally, as with non-handicapped students, special education students may not be suspended solely for truancy, smoking, cutting classes, or poor academic achievement.

III. GUIDANCE CONSIDERATIONS

Every effort must be made to assist special education students in making a successful adjustment to their educational program. These efforts may include the use of all school-based, district, and City Board pupil personnel services, such as: special education teachers, regular teachers, district supervisors, guidance counselors, SBST's, and personnel from DSE.

Frequent episodes of disruptive behavior should be documented in a student's anecdotal record that includes a description of specific remedial steps taken by staff to ameliorate the situation. Episodes of disruptive behavior are not in and of themselves necessarily cause for suspension. They should signal the need for guidance meetings with a student's parents or guardian, teachers, the SBST, and other school staff to assess the appropriateness of a student's class site, and the possible need for an SBST or COH to reevaluate the appropriateness of the students classification or educational program, or both. Parents should be encouraged to attend these meetings. They must be informed in advance that one result of the meeting may be a determination to recommend a reevaluation or change of class site within program. If in the course of guidance meetings:

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*An "emergency circumstance" may also include possession of a weapon. Procedures for suspension of students carrying weapons are governed by Regulation of the Chancellor A-430, Carrying Weapons in Schools.

A. It is determined that reevaluation of a student's handicapping condition is necessary, then written consent should be sought from the parent or guardian. However, if such consent is not quickly forthcoming, the student should be referred without interruption of his education to the SBST or COH with written notice to the parent or guardian;

B. It is determined that a change in class site within the same program is appropriate, then the student may be transferred by the Executive Director of DSE* with notice to the Site Supervisor, after consultation with the Community Superintendent or the Executive Director of the Division of High Schools, or their designees, as appropriate. In such cases, the COH need not make a recommendation and no formal COH proceedings are required. The written consent of the student's parent or guardian should be sought at or subsequent to the conference. If such consent is not quickly forthcoming, or the parent or guardian disputes the advisability of changing the class site, then the change may be made, but the student's parent or guardian must be given notice that includes: a description of the proposed change, an explanation for the proposed change, a description of any other factors relevant to the proposed change, and information concerning the right to appeal the appropriateness of the class to the COH and subsequently to the Impartial Hearing Office.

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*The term "Executive Director of DSE" in this Regulation shall include his or her designee(s).

IV. EMERGENCY SUSPENSIONS

A. Principals' Responsibilities During Emergency Suspensions

If a special education student is removed from a class because of emergency circumstances, the following steps are to be taken by the principal:*

1. Prior to suspending the student, inform the student of the charges against him or her and, if the student denies them, give the student an explanation of the evidence and an opportunity to present his or her side of the story; if it is feasible to do so.

2. Prior to suspending a student placed in self-contained classrooms or a school exclusively for children with handicapping conditions, immediately telephone the Executive Director of DSE to inform him/her of the circumstances and request approval for the suspension. Approval of the Executive Director is not required prior to the suspension of students whose placements are in other than self-contained classrooms or schools exclusively for children with handicapping conditions, but the Executive Director shall be informed of such suspensions by the principal.

3. Once approval has been obtained or the Executive Director of DSE has been informed, as appropriate, notify the student's parent or guardian immediately by telephone or telegram that an emergency suspension has been authorized. Notice to parents must include the reasons for the suspension. Parents should be told where the student can be located in the school and asked to come to the school to pick up the student. School officials must make every effort to notify the student's parent or guardian that the student has been suspended on the same day as the emergency circumstance occurred, and also to arrange an emergency suspension conference with them at a mutually acceptable date and time. The suspension conference should be scheduled as soon as possible, but in no event more than five school days from the date of the suspension.

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*Only the principal or, in the principal's absence, the school official designated as "acting principal", may authorize a suspension.

4. Notify the school's SBST.

5. Retain the student under supervision until the close of the school day on which the emergency circumstance occurred, or until the student's parent or guardian arrives.

6. If the student receives door-to-door school bus transportation, notify the Bureau of Pupil Transportation that the student will not be attending school for the period of suspension.

7. Send classwork and homework assignments to the student's home. Additionally, the principal must ensure that the student is not academically penalized* during the suspension period and is permitted to take any City-wide or State examinations that are administered during the period of suspension for which no make-up examination is permitted by the testing authority, as well as to make up school examinations, such as finals, which may affect their academic records.

8. Send letters, by both certified and regular mail and no later than one school day following the day of the suspension, to the student's parent(s) or guardians informing them that the student has been suspended and including the following:

   - the specific reasons for the suspension;
   - that the student should not return to school during the suspension period;
   - date, time, and place, no more than five school days from the date of the suspension, for a suspension conference with the parent or guardian, the student, and appropriate personnel to discuss the suspension and that the parent or guardian's presence is required;

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*An academic penalty, such as reduction of grade, may only be imposed as a disciplinary measure if the emergency circumstance for which a student was suspended is directly related to an academic activity. An academic penalty may not be imposed for absence during the suspension period.

- that the suspension conference will be held on the date scheduled unless the parent or guardian requests an extension of the conference date from the principal, but that if the new date requested falls more than five school days from the date of the suspension, the principal may exercise the option to hold the conference on the scheduled date regardless of whether the student and the parent or guardian appear;

- that the parent or guardian may be represented at the conference by counsel or other advisor and may present witnesses on the student's behalf and question all persons involved in the incident for which the student has been suspended;

- a statement of the student's right to return to attendance upon instruction at the end of the suspension period;

- the procedures for appealing any actions which have been taken with respect to the suspension.

- a list of community agencies offering free legal assistance.

B. Emergency Suspension Conference Procedures

The suspension conference presents an opportunity for parents, teachers, school and Special Education personnel to assess the facts surrounding the suspension of a special education student and to devise cooperatively a mutually satisfactory solution to the problems which have been identified and prevent further disruption of the student's education.

Suspension conferences shall include the following procedures:

1. The school principal shall conduct the conference and may not delegate his responsibility to attend even if he or she was not present at the time of the suspension.

2. The parent or guardian should be strongly encouraged to atten the conference. However, if the parent or guardian fail to request an extension or request on extension to a date more than

five school days from the date of the suspension, the principal may hold the conference on the scheduled date regardless of whether the student and the parent or guardian appear.*

3. The parent or guardian and the principal may each bring two additional persons to the conference,** unless by mutual consent they agree to the presence of additional persons. The conference is not a formal, contested proceeding; it is a guidance mechanism, and should not become adversarial. Therefore, although the additional persons brought by the parties may be attorneys or advocates, they may participate only as advisors. The parent or guardian and the student may, however, question and present witnesses, offer statements and otherwise fully participate in the proceedings.

4. A written summary record of the conference may be prepared in the discretion of the principal and entered in the student's anecdotal record.*** A copy of the record, if any, shall be made available to the parent or the Executive Director on request.

C. Disposition

If the principal determines following the suspension conference that the suspension was not justified, then the student must be returned to school immediately and all records relating to the suspension expunged.

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*If the student and/or parent or guardian are absent, the principal shall so state on the record, describe efforts by school officials to ensure their presence, and proceed with the conference. The parent or guardian shall be informed in writing that the conference was conducted on the scheduled date and of any decisions reached at the conference.

**At least one of the additional persons brought by the principal shall be from the school's SBST.

***Such entry may require written notification of the parent or guardian. See Regulation of the Chancellor A-820(VII)(E).

If the principal determines that the suspension was justified, then no more than five school days from the date of the suspension, the principal shall return the student to school or refer the student for expedited action by the appropriate SBST/COH. The SBST/COH shall review educational and clinical materials concerning the student's history and/or handicapping condition and all other information of an evaluative nature and recommend one of the following, to be provided on an expedited basis:

1. Return of the student to the class suspended from; or
2. A change in class site within the current program, in accord with the notice and consultation requirements of Section III(B) of this Regulation; or
3. An emergency reevaluation if a reconsideration of the appropriateness of the student's program is determined to be advisable by the SBST/COH. The student shall be reevaluated on an expedited basis.

When a change in class site or reevaluation is recommended, the Executive Director of DSE shall:

1. Notify the student's parent or guardian in writing; and
2. Insure that the student is returned to the original classroom at the end of the five day suspension period; or
3. Upon notice to the parents or guardian, arrange for attendance in a special interim setting, or home instruction until a new site has been located, or until the emergency reevaluation has been completed and a determination has been made as to whether the student is in need of a more restrictive program.

V. APPEALS RESULTING FROM SUSPENSIONS OF SPECIAL EDUCATION STUDENTS

A. Appeals of the principal's determination that a suspension of a child attending a self-contained classroom or a school exclusively for children with handicapping conditions was justified shall be made in writing directly to the

Chancellor.* Appeals involving elementary and junior high students attending less restrictive programs shall be taken in the following sequence:

1. to the community superintendent;
2. to the community school board;
3. to the Central Board of Education.

Appeals involving high school students attending less restrictive programs shall be taken in the following sequence:

1. to the Borough Superintendent or the Supervising Assistant Superintendent;
2. to the Chancellor;*
3. to the Central Board of Education.

B. Appeals must be made within twenty school days of the date on which the principal issued an adverse decision. Decisions upon appeal will be in writing and will include the reasons for the decision. In any case where the suspension is found to have been unjustified, the record of the suspension and proceedings related to it shall be expunged from the student's record.

C. Appeals concerning referral of a student by the principal to the SBST/COH and any subsequent SBST/COH determinations are to be made directly to the Impartial Hearing Office. Such appeals may include those relating to change in program or evaluation.

VI. CLERICAL PROCEDURES TO BE EMPLOYED DURING SUSPENSION OF SPECIAL EDUCATION STUDENTS

A. Special education students who have been suspended will remain on the register of their schools and will be marked absent in the roll book during the period of suspension.

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*A copy of the appeal should be filed simultaneously with the Office of Legal Services, Room 920, 110 Livingston Street.

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

Category: Students
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B. Youthful Delinquent Cards

When the record of the suspension is expunged, but a Youthful Delinquent (YD 1) Card has been issued against a student as a result of the suspension, the authority who expunges the suspension must undertake the following procedure:

1. Send a letter to the Commanding Office of the Youth Aid Division of the New York City Police Department, 34½ West 12th Street, New York, New York 10011, stating that the suspension and the charges against the student have been expunged;
2. Request that the YD 1 Card be expunged; and
3. Request written confirmation that the YD 1 Card has been expunged.

C. Record Keeping

At the end of each semi-annual reporting period of the school year, each principal shall send the "Tally Sheet and Report on Pupil Suspension" to the appropriate superintendent.

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

Number: A-820

Category: STUDENTS

Page: 1 of 35

Subject: STUDENT RECORDS: ACCESS AND DISCLOSURE

Issued: 11/15/91

I. INTRODUCTION

This regulation incorporates pertinent provisions of the Family Educational Rights and Privacy Act (20 U.S.C. 1232-g) commonly referred to as "FERPA" or the "Buckley Amendment."

II. BACKGROUND

A. Purpose

1. The purpose of this regulation is to set forth the requirements governing student education records in order to insure the protection of the rights and privacy of students and parents.

2. These education records are collected and maintained by schools to provide:

   a. data pertaining to the growth and development of individual students,

   b. information to parents and authorized staff, and

   c. a basis for the evaluation and improvement of school programs.

3. It is the responsibility of each school to preserve the rights of privacy of all students and parents.

4. The rights created by this regulation shall apply to all education records maintained by the City School District which relate in whole or in part to any student currently in attendance at a school or former student, identified in those records either by name, social security number, or by some other symbol such as an identification number.

III. DEFINITIONS

1. "EDUCATION RECORDS"

   1. Records directly related to a student which are maintained by the City School District or a Community School District.

   2. This term does not include:

      a. School Medical Treatment Records. These are kept in the medical room of each school, are the property of the New York City Department of Health and are medically confidential. Such records and access to them are subject to regulations established by the New York City Department of Health. However, medical records that are established and maintained by Board of Education personnel (e.g. Cumulative Health Record Card, immunization sheet, or doctor's notes exempting students from physical education) are considered education records.

      b. Records maintained by principals, supervisors, teachers or other school personnel for their individual use, which are not released to any other person. These records shall be considered to be the personal property of the principal, supervisor, teacher or other school personnel, and may not be disclosed to other teachers, principals, supervisors or other school personnel.

2. "PERSONALLY IDENTIFIABLE INFORMATION"

   1. Includes, but is not limited to:

      a. student's name
      b. name of the student's parent or other family members
      c. address of the student or student's family
      d. personal identifier, such as student's social security number or student identification number
      e. personal characteristics of the student or the student's family

3. "PARENT"

   1. A parent of a student includes a natural parent, a guardian, or an individual acting as a parent who provides ongoing custodial care.

4. "STUDENT"

   1. An individual who is or has been in attendance at a school and regarding whom the school maintains education records.

5. "ELIGIBLE STUDENT"

   1. A student who has reached 18 years of age or is attending an institution of postsecondary education.

6. "RECORD"

   1. Any information recorded in any way including, but not limited to:

      a. handwriting
      b. type
      c. print

d. film
e. microfilm
f. microfiche
g. hardcopy
h. computer disks or tapes (See §VIII for specific references to computerized information.)

7. "INFORMED CONSENT"

1. The parent or eligible student has been fully informed of all information relevant to the student's education records for which consent is sought and has been notified of the records of the student which will be released and to whom they will be released;

2. The parent or eligible student agrees in writing to the release of the student's education records for which consent is sought; and

3. The parent or eligible student is made aware that the consent is voluntary on the part of the parent or eligible student and may be reconsidered at any time.

IV. TYPES OF EDUCATION RECORDS

A. Permanent Records

1. The blank forms of all permanent records used in schools and in other offices of the City School District shall be available for public inspection in the Office of Parent Involvement, Room 108, 110 Livingston Street, Brooklyn, New York 11201 and in each school of the City School District during regular business hours.

2. Permanent records are as follows:

   a. The Cumulative Record - Personal and Educational (elementary schools)
   b. The Cumulative Record - Test Data
   c. Pupil Permanent Record Card (secondary schools)
   d. The Cumulative Health Record
   e. Attendance Card

B. Special Education Records

1. The blank forms of special education records used in schools and other offices of the City School District shall be available for public inspection in the Office of Parent Involvement, Room 108, 110 Livingston Street, Brooklyn, New York 11201, at the Office of the Committee on Special Education in each Community School District and in each school of the City School District housing special education students during the regular business hours.

2. Special Education records are as follows:

   a. Individual Education Program (IEP)

   b. Social History Reports

   c. Educational, Psychological, Psychiatric, and Related Service Providers Evaluations and Reports

   d. Teacher Evaluations and Reports

   e. All Materials in the CSE Clinical Records File

C. Other Education Records

1. Other education records include the following:

   a. Guidance Records

      1. Anecdotal Record (Dean's Record)

      2. Guidance Personnel Records - These records, maintained by Guidance personnel shall be:

         i. Kept apart from the student's permanent records

         ii. Maintained in an appropriate office

         iii. Screened and reviewed at least twice each year by guidance personnel (or other person designated by the principal) for the removal of irrelevant and extraneous material

   b. Parent Student Ethnic Identification Form

   c. Home Language Identification Survey Form

V. ADMINISTRATIVE RESPONSIBILITY FOR STUDENT RECORDS

A. Principal or Head of Office Responsibilities

1. The principal or head of any office possessing student records shall be directly responsible for the observance of law, policy, regulations and directives in the collection of information for student education records, their proper maintenance, physical security and protection,

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the proper dissemination of information contained therein, and the forwarding of records for official purposes to a higher authority when so directed.

2. The principal or head of office concerned shall ensure that school staff under his or her jurisdiction receive periodic instruction and training regarding the privacy rights of students and parents, and the confidential handling of student records.

VI. NOTIFICATION OF PARENTS AND ELIGIBLE STUDENTS INFORMING THEM OF THEIR RIGHTS REGARDING STUDENT EDUCATION RECORDS

A. Annual Notification of Rights

1. The principal or head of office shall be responsible for insuring that a notice to parents delineating their rights regarding student education records is disseminated annually in such a manner that all parents and students will be informed of its contents.

2. The text of the notice should read as follows:[1]

Annual Notice to Parents - Under the policies of the Board of Education of the City of New York and the Family Educational Rights and Privacy Act (FERPA) you have the following rights:

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[1] The pamphlet "Students and Parents: Know Your Rights - Student Records," which contains this information, can be obtained at the Office of Parent Involvement, Room 108, 110 Livingston Street, Brooklyn, N.Y. 11201. Principals or heads of office who distribute this pamphlet annually to parents and students will fulfill the notice requirement of this regulation.

1. To inspect and review education records maintained by the schools that pertain to your child;

2. To have access to your child's computerized education records;

3. To challenge the content of records on the grounds that they are inaccurate, misleading or in violation of your child's privacy or other rights and request that such records be amended;

4. To control disclosures from your child's education records, with certain exceptions;

5. To obtain the Board of Education policy with respect to how student education records may be obtained from your child's school; and

6. To file written complaints regarding alleged violations of the FERPA with the Family Policy and Regulations Office, U.S. Department of Education.

   a. The complaint must contain specific allegations of fact giving reasonable cause to believe that the FERPA has been violated.

3. The principal or head of office shall provide for notification in the dominant language to parents of students identified as having a primary or home language other than English.

VII. ACCESS AND RELEASE OF INFORMATION IN STUDENT RECORDS

A. General Provisions

1. In keeping with the individual's right to privacy, no part of a student's education record may be divulged with a personal identifier to any person, organization, or agency in any manner not covered by this or subsequent regulations unless:

   a. There is informed written consent by the parent or eligible student. Unless there is a state law, court order or legally binding document governing such matters as divorce, separation or custody that specifically revokes these rights, the principal or his/her designee may presume a parent has the authority to exercise the rights inherent in FERPA.

   b. There is a valid court order or lawfully issued subpoena requesting such information. In such cases, prior to complying to such order or subpoena the principal or head of office shall notify the parent or eligible student immediately in writing of the information which has been subpoenaed or which is the subject of the court order. (Questions concerning the validity of a court order or subpoena should be directed to the Office of Legal Services, New York City Board of Education, 110 Livingston Street, Brooklyn, New York 11201, Telephone number (718) 935-3636.)

B. Access to Student Records by Parents, Legal Guardians and Students

1. When a parent or eligible student requests to see his or her child's, or his/her own education records, the parent or eligible student shall be accorded an expeditious opportunity to do so. Such request is not required to be in writing.

2. The parent or eligible student is entitled to duplicate such written records or computer printouts, and not only to have items selected and read by school officials. However, original records may not be removed from the school by the parent or eligible student.

3. Access to the record shall be made possible at the earliest convenient date. In no case shall the waiting period be longer than forty-five calendar days after receipt of the request from the parent or eligible student.

4. Parents or eligible students may make notes regarding their children's or their own records. Upon the request of a parent or eligible student, the school office shall supply duplicates of requested records at cost (no more than 25 cents per page). In cases where parents or eligible students cannot afford the cost of duplicating, the charge will be waived upon written notice to the school that the parent or eligible student is unable to afford the cost. A parent or eligible student may not be charged a fee to search for or to retrieve the education records of a student.

5. The principal shall arrange for a member of the professional staff to respond to requests for explanation of the records and to assist the parent or eligible student in interpreting the records made available at the parent's or eligible student's request.

6. Parents who are disabled or who live outside New York City are entitled to have photocopies made for them of any records which they request to see, and to have photocopies forwarded to them. Upon the request of such parent, the principal shall arrange to have a member of the school's professional staff assist the parent in

interpreting the records made available in this way, either by telephone, in person, or through the mail, in a way the principal feels best utilizes the staff member's time. Copies of records will be made available to the parent at cost (no more than 25 cents per page). In cases where parents cannot afford the cost of duplicating, the charge will be waived upon written notice to the school that the parent is unable to afford the cost.

7. The principal shall not authorize the destruction of any education record if there is an outstanding request to inspect and review the record[2].

8. In the case of estranged, separated or divorced parents, or in the case of children in the custody of some person or institution other than their parent:

   a. Requests by a parent or custodian with whom the child resides to examine the child's records will be honored according to the procedure detailed above.

   b. For requests by a parent with whom the child does not reside, (i.e. the non-custodial parent) to see the child's records, the principal will notify the parent or institution with whom the child does reside of the request. The notice will tell the custodian of the child that the request has been made, the name of the person making the request, and the date on which the request was made. Whenever practical, the notice shall be written in the primary language of the student's home. (A sample Notice of Request for Access to Student Records by Non-Custodial Parent appears as Form I of this regulation.) The parent making the request shall be notified at the time of the request that the custodial parent is being given an opportunity to inform the school as to whether a binding instrument or court order bars the school from giving the parent access to the records, and if no such document has been found within the forty-five calendar days, the records will be made available to the parent.

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[2] Destruction of student education records is governed by the Records Retention and Disposition Schedule. (See Appendix I for a copy of this document).

9. If the education records of a student contain information regarding more than one student, the parent or eligible student may inspect and review or be informed of only the specific information which pertains to his or her child or the eligible student.

10. High School students under 18 years of age have the right to see their permanent records upon request.

C. Access to Records by Parents of Students 18 Years or Older

1. When a student attains the age of eighteen, the rights accorded, and consent required of parents is transferred from the parents to the student. The school may provide the student with a waiver form which provides that, so long as the student continues to attend the school, the student authorizes his or her parents to exercise all the

rights defined in this regulation. Such waiver will also provide that information released to a custodial parent will be considered to have been released to the student. (A sample Permission to Permit Parents to Have Access to and Authorize Release of Student Records form appears as Form II of this regulation.)

D. Access to Records by School Staff and Other Board of Education Employees

1. The policy which this regulation seeks to effectuate is that indiscriminate access to student records, even by the professional staff of a school, is neither permitted nor encouraged. A staff member or other Board of Education employee who seeks access to a particular student's records must have a specific and legitimate educational reason for the request. The validity of the legitimate educational reason is to be determined by the principal or head of office.

2. School staff members who are providing on-going educational services to the student, such as a student's current teachers or a grade advisor, are not required to obtain permission to access the student's records for legitimate educational reasons. However, other staff members must make a written request to the principal or head of office for permission to access a student's record. The request must state the legitimate educational purpose for seeking access to the student's records.

3. The principal or head of office may delegate the responsibility for evaluating whether a particular request for disclosure constitutes a legitimate educational interest. However, it is the principal's or head of office's

responsibility to ensure that the determination is made in each case and that the person making the request has a legitimate reason for making the request.

4. Information and data concerning students or their families collected by schools for the planning, operation and evaluation of school and school-related programs shall not identify individual students or families unless the school obtains the informed written consent of the parents or eligible students involved before the collection of such information.

E. Release of Information to Persons, Organizations or Agencies Other Than Parents, Legal Guardians, Students or School Staff

1. Except in cases where there is a court order, state law or lawfully issued subpoena, no personally identifiable information concerning the student may be released to non-school agencies or individuals, including employers, colleges or universities, sponsors of scholarship or aid programs, city, state or federal agencies, the courts, labor unions, fraternal organizations, probation or welfare departments, lawyers, doctors, armed services recruiters, etc., without the informed written consent of the parent or eligible student.

   a. The parent's or eligible student's written and dated consent must specify which records may be disclosed and the purpose of the disclosure, and must identify the party or class of parties to whom the information may be disclosed.

   b. In the case of a request by a parent or eligible student for release of information to a third party, that request must be signed and must include the description of the information to be released and must identify the party or class of parties to whom the disclosure may be made. Parents or eligible students should be informed that if they wish to limit the purposes to which the released information may be put, their request for release should either specify those purposes or state that use should be limited to "purposes to be determined according to the agreement between (name of third party) and myself."

2. School officials may disclose student education record information to organizations conducting studies for, or on behalf of the school, without prior parent or eligible student consent, to:

   a. Develop validate, or administer predictive tests

   b. Administer student aid programs; or

   c. Improve instruction

   The student education record information may only be disclosed if:

   a. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

   b. The information is destroyed when no longer needed for the purposes for which the study was conducted.

3. Any individuals or groups who wish to conduct research at a school site, gather information on or from students, or survey school staff must obtain written approval from the Office of Research, Evaluation, and Assessment (OREA). Once the individuals or groups have received an approval letter for their research project, they must obtain the superintendent's and principal's signatures indicating their permission to proceed with the research in their district or school. Where access to personally identifiable student information is required, permission from the parent or eligible student must be obtained.

   This procedure does not apply to research conducted by and for an office of the New York City Board of Education. (For complete guidelines please refer to "Doing Research in New York City Public Schools: Proposal Guidelines" available from OREA at 110 Livingston Street, Room 738, Brooklyn, New York 11201.)

4. Consent Forms to be used are as follows:

   a. Schools may use standard consent forms, signed by the parent, granting permission to the school to provide pertinent records to colleges and employers. Such consent forms shall be valid only while the student is registered in the school.

   b. In the case of eligible students, the written consent of the student shall be sufficient authorization for the release of such information.

   c. Whenever written consent is required, the principal shall assume that a parent who has custody of the child has the legal authority to give such consent.

If consent is given by a non-custodial parent, for example when parents are estranged or divorced, or when custody has been granted to a guardian, no records shall be released until the following steps have been taken:

(1) The custodial parent or institution shall be notified that the consent has been granted. Such notice shall include the name of the person granting consent, the date on which consent was granted, and the person to whom the information is to be released. (A sample Notice of Consent of Non-Custodial Parent to Release of Records appears as Form III of this regulation.) The notice will state that unless evidence is presented to the principal or head of office which denies the person giving consent the authority to do so, the records will be released forty-five days after receipt of the request. The only valid evidence which may be presented is evidence of a binding agreement, court order or state law which specifically revokes such right.

(2) A copy of this notice will be sent to the non-custodial parent who has made the request.

(3) The principal or head of office shall not release any records at the request of a non-custodial parent until forty-five days after receipt of the request unless he or she is informed by the custodial parent before expiration

of forty-five days that nothing bars the non-custodial parent from granting the release of the records.

(4) Where evidence has been presented of a binding agreement, court order or applicable state law which denies the non-custodial parent the authority to consent to the release of his or her child's records, the principal or head of office shall not release the student's records.

5. The informed written consent of the parent for release of information to non-school agencies or individuals is not required where it is determined that an emergency exists in which the health, safety or welfare of the student or other individuals requires the release of information before such consent can be obtained.

6. Records may be released without parental or eligible student consent to the following authorities:

   a. To authorized representatives of the Comptroller General of the United States, the Secretary of Education or state and local educational authorities;

   b. To officials of New York State and New York City to whom information is specifically required to be reported or disclosed pursuant to State statutes adopted prior to November 19, 1974;

   c. To accrediting agencies in order to carry out their accrediting function;

d. To comply with a judicial order or lawfully issued subpoena, provided that the school staff shall make a reasonable effort to notify the parent of the student of the order or subpoena in advance of complying with it; and

e. To appropriate parties in connection with an emergency, if knowledge of the information to be released is necessary to protect the health or safety of the student or other individuals.

7. The principal or head of office does not have any responsibility to investigate the subsequent uses of student records which are lawfully released to third parties. The principal's or head of office's sole responsibility shall be to label any record released to a third party with a notice or stamp which reads as follows: "This is a copy of information contained in the education records of a student at a school within the city school district of New York City. Its disclosure is subject to the terms of the restrictions of the Family Educational Rights and Privacy Act and has been released on condition that it will not be further disclosed, without permission of the student's parent, to any party other than the officers, employees or agent of the party to whom it has been released, and that it will be used solely for the purpose for which it was disclosed."

8. This section is to be followed strictly. Doubt as to the propriety of disclosing information from a student's record is sufficient justification for withholding or denying information until the doubt is

dispelled or proper authority is shown. Questions concerning this section may be referred to the Office of Legal Services, Board of Education, 110 Livingston Street, Brooklyn, New York 11201, Telephone (718) 935-3636.

F. Recording of Request For Access

1. The principal or head of office shall, for each request by a person other than a parent or eligible student for disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

   a. The parties who have requested or obtained personally identifiable information from the education records of the student;

   b. The legitimate education interest the parties had in requesting or obtaining the information; and

   c. The information actually disclosed.

2. The record of disclosures may be inspected:

   a. By the parent of the student or the eligible student;

   b. By the school official and his or her assistants who are responsible for the custody of the records; and

   c. By those parties authorized in section VII(E)(6)(a)(b) and (c) for the purposes of auditing the recordkeeping procedures of the school.

3. The principal or head of school is not required to maintain a record of each request for access to or each disclosure of personally identifiable information from students' education records to:

   a. school officials, including teachers, within the school;

   b. a party with written consent from the parent or eligible student; or

   c. a party with a subpoena or court order.

VIII. ACCESS TO COMPUTERIZED STUDENT DATA

A. Introduction

The advent of computerized student education records gives rise to new issues concerning the confidentiality of such data. Therefore, specific procedures must be followed to safeguard the information from inappropriate users or use and to ensure that the information is available only to individuals and organizations that have legitimate educational reasons for accessing the data. The policy which this Regulation seeks to effectuate is to allow individuals and organizations access to student education records information, while ensuring that the students' and parents' privacy rights are not violated. Access to all computerized student data is governed by the rules and security procedures set forth in this Regulation.

B. Access to Computerized Student Education Records Information by District Superintendents, Directors, Principals or Other Board of Education Employees.

1. Under the FERPA regulations, prior parental or eligible student consent is not required for disclosure of personally identifiable information

from an education record of a student if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interests.

2. District Superintendents and their designees shall have access to personally identifiable information, without prior parental or eligible student consent, for legitimate educational purposes.

3. Directors of other Board of Education Divisions and their designees (e.g. Division of Special Education) utilizing systems such as the Child Assistance Program System (CAPS) and the University Application Processing Center (UAPC) shall have access to personally identifiable information, without prior parental or eligible student consent, for legitimate educational purposes.

C. Access to Computerized Student Education Records Information by Board and Non-Board of Education Employees in an Advisory or Consultative Role:

1. Access to computerized student records information by Board and non-Board of Education employees in an advisory or consultative role (i.e. teachers, parents, support staff, supervisors and SBM/SDM team members) shall be limited to information in the aggregate. Access to such information is for the purpose of enabling these individuals to make decisions for the planning, operation and evaluation of school and school related programs. Only Board of Education employees determined by the principal to have a legitimate educational interest shall have access to individual student records for this purpose.

D. Storage of Computerized Student Education Records on Hard or Floppy Disks.

1. Any information contained on these disks is confidential and is subject to the same protection afforded to student education records in other formats. As such, this information should not be copied or disseminated without adhering to the applicable federal law as set forth in this regulation.

E. Security Measures

1. Each individual authorized to access the computerized information must receive a copy of Mayoral Directive #81-2 (Electronic Data Processing Security) outlining the security measures to be taken with respect to the use of electronic data processing systems, and must sign the "Acknowledgment of Receipt of Mayoral Directive #81-2" form. (A sample of these documents appears as Appendix II and Form IV to this regulation.) Such individuals must also receive a copy of "Student Records: Administrators' and Teachers' Responsibilities" outlining their responsibilities and duties and the security precautions to be taken with respect to protecting the privacy rights of students and parents. (A sample of this document appears as Appendix III.)

2. All District Superintendents, Directors and Principals maintaining any computerized student information records are responsible for ensuring that the computerized student information is safeguarded. To that end, the school's or division's computer must be placed in a secure location, and when not in use be kept under lock and key.

3. Each school or division head should designate a person who will be authorized to access the information from the computer.

4. Computerized data must be password protected.

5. Computer printouts of student or parent data should be shredded or boxed and disposed of in a secured manner.

F. Training

1. All individuals having direct access to computerized student information must participate in an annual training program aimed at ensuring that these individuals are apprised of the need for the confidentiality of the information retrieved and the security precautions which must be undertaken with respect to this information. Additionally, these individuals must be made fully aware of the privacy rights of the students and the parents and how to protect these rights.

2. The training program will be conducted by the Office of Educational Data Services and the Division of Computer Information Services.

IX. ENTRIES IN STUDENT RECORDS

A. What Can be Recorded on the Permanent Record Card

1. The school may record information concerning activities, development and achievement in school. Only superintendent's suspensions may be included on the permanent record card.

B. What Cannot be Recorded

1. The permanent record cards may not be used to record non-school related incidents or activities of the student or his family.

C. Recording of Derogatory Information and Parent Notification

1. A notation in the student's record which is derogatory to the student shall be entered in the record and the parent or eligible student notified within fifteen school days following the date on which the incident leading to the entry became known.

D. The Right to Challenge an Entry

1. The student and parent have the right to answer or explain in writing any material entered in any of the student's records, and such written answer shall be included in the record by the principal. The answer shall be included with the entry to which it responded whenever that entry is disclosed by the principal or head of office to any party under any of the regulations included in this document.

E. The Right to Appeal

1. In addition to the right to file a written answer to derogatory material, the parent or eligible student shall have the right to appeal any entry in his or her child's records which is derogatory, inaccurate, misleading, or in violation of the student's privacy or other rights. Derogatory, inaccurate, or misleading information, or information in violation of the student's privacy or other right shall be expunged from the student's record by the principal or higher authority if the parent's or eligible student's appeal is sustained.

X. APPEAL PROCEDURES

A. Non-Special Education Records for General Education, Special Education and City-Wide Programs/District 75 Students

1. A Conference

a. Within three months following notification of the entry of derogatory information, the parent or eligible student shall confer with the principal regarding any derogatory entry in the student's file. The principal shall make a determination concerning the entry within fifteen school days following the conference. The principal may modify or expunge the entry from the student's record where such action is warranted. Removing or expunging an entry from a student's record is not an admission that the entry was improper, or that any person acted improperly by including the entry on the record.

2. A Written Appeal to the Principal

a. Withing fifteen school days from an adverse result of the conference, the parent or eligible student may appeal in writing to the principal. The principal shall rule on such written appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the principal denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to appeal further.

3. A Written Appeal to the Community Superintendent, High School Superintendent or Superintendent, City-Wide Programs/District 75

   a. Within fifteen school days from receipt of the principal's decision, the parent or eligible student may appeal the ruling of the principal, in writing, to the Community Superintendent, High School Superintendent or, in the case of centrally operated special education schools to the Superintendent, City-Wide Programs/District 75. The Community Superintendent, High School Superintendent or City-Wide Programs Superintendent shall rule on such an appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Community Superintendent, High School Superintendent or City-Wide Programs Superintendent denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to request a formal hearing.

B. Special Education Records

1. A Conference

Within three months following notification of the entry of derogatory information, the parent or eligible student shall confer with the Chairperson, Committee on Special Education or his/her designee regarding any derogatory entry in the student's clinical file. The chairperson may modify or expunge the entry from the student's record, as per federal and local laws, where such action is warranted. Removing or expunging an entry from a student's record is not an admission that the entry was improper, or that any person acted improperly by including the entry on the record.

2. A Written Appeal to the Chairperson, Committee on Special Education

Within fifteen school days from an adverse result of the conference, the parent or eligible student may appeal in writing to the Chairperson, Committee on Special Education. The Chairperson shall rule on such written appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Chairperson denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or student's right to appeal further.

3. A Written Appeal to the Clinical Administrator, Regional Office

Within fifteen school days from an adverse ruling, the parent or eligible student may appeal the ruling of the Community School District Chairperson, Committee on Special Education in writing to the Clinical Administrator, Regional Office. The Clinical Administrator shall rule on such an appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Clinical Administrator denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to appeal further.

4. A Written Appeal to the Executive Director, Division of Special Education

Within fifteen school days from an adverse ruling, the parent or eligible student may appeal the ruling of the Clinical Administrator in writing to the Executive Director, Division of Special Education. The Executive Director shall rule on such an appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Executive Director denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to request a formal hearing.

C. A Written Request for a Formal Hearing Before a Hearing Officer

1. If the Community Superintendent, High School Superintendent, Superintendent, City-Wide Programs/District 75 or Executive Director, Division of Special Education denies the parent's or eligible student's appeal in whole or in part, or fails to render a ruling within the prescribed time period, a parent or eligible student may request a formal hearing within twenty school days from an adverse ruling or failure to rule. A hearing officer shall be appointed by the Community School Board for schools or offices in a community school district, or by the Chancellor for schools or offices within the jurisdiction of the City Board of Education.

2. The hearing officer may be any person, including an employee of the City School District, so long as he or she is not directly involved with the student, school or record involved in the hearing.

D. The Time Limit for the Formal Hearing

1. The hearing shall be held within forty-five calendar days after the parent or eligible student files the request for an appeal with the Chancellor or Community School Board, and the parent shall be given notice of the date, place and time of the hearing.

E. The Conduct of the Hearing

1. The parent or eligible student shall be afforded a full and fair opportunity to present evidence relevant to issues raised in the appeal and may be assisted or represented by individuals of his or her own choice at his or her own expense, including an attorney. No formal record of the hearing need be maintained. However, the hearing officer must take sufficient notes of the testimony heard and evidence presented at the hearing, such as the information required to be included in the hearing officer's written report in §X(F)(1), to serve as a record of the hearing if an appeal is filed.

F. The Report of the Hearing Officer

1. The hearing officer shall make a written report to the Community School Board for complaints involving schools or offices in a Community School District, or to the Chancellor, for complaints involving schools or offices within the jurisdiction of the City Board of Education, including a summary of the evidence, the hearing officer's findings of fact, recommendations and reasons for recommendations, within fourteen calendar days from the conclusion of the hearing.

G. The Review of the Report of the Hearing Officer

1. The Community School Board (or Chancellor, as appropriate) shall review the report of the hearing officer and issue a decision within forty-five calendar days of the transmission of the hearing officer's report to the Community School Board or Chancellor. Such decision must include a summary of the evidence and description of the reason(s) for the decision.

2. Upon request, the parent or eligible student may obtain a copy of the hearing officer's report.

H. An Appeal from a Community School Board Decision

1. Adverse decisions of the Community School Board may be appealed in writing to the Chancellor. Such appeal shall be filed within fifteen school days of the decision. The Chancellor shall issue a written decision within fifteen school days after receipt of the appeal.

I. An Appeal from a Chancellor's Decision

1. Adverse decisions of the Chancellor may be appealed in writing to the City Board of Education. Such appeal shall be filed within fifteen school days of the decision. The City Board of Education shall issue a written decision within fifteen school days after receipt of the appeal.

J. The Recording of a Change in a Student Record

1. If a decision orders any change in the student's record, such change shall be carried out by the principal or chairperson under this Regulation. If the parent or eligible student so requests, notice of the change shall be sent to all parties

(not including school staff) who were recorded as having access to the portion of the record ordered changed within one calendar year of the decision.

2. The expunging of the student's record must be done in such a way to completely eradicate the disputed entry. Notification of the expungement must be sent to all parties to whom the record has been forwarded.

K. The Recording of a Parent's Answer

1. If a decision denies the parent's or eligible student's appeal in whole or in part, the decision shall include notice of the parent's or eligible student's right to enter an answer into the student's records.

XI. TRANSFER OF RECORDS

A. Transferring Records Within the City School District

1. When a student moves from one public school to another school within the City School District, the permanent records shall be forwarded to the new school. A copy of the forwarded records will be given to the parents or eligible students upon request.

2. Prior to transferring a guidance folder (not the guidance records defined in §IV(C)(1)(a)(2) of this Regulation), the folder must be reviewed by the guidance personnel, guidance supervisor, principal or appropriate designee to ensure outdated information has been removed.

B. Transferring Records Outside of City School District

1. The parent's or eligible student's authorization is necessary to transfer records to schools other than those in the City School District of New York. When school authorities state that a parent has registered a child with them, this shall constitute sufficient authorization for transfer of copies of appropriate permanent records. A copy of the records so transferred will be given to the parents or eligible student upon request.

XII. SUGGESTED FORM LETTERS

FORM I

Notice of Request for Access to Student Records by Non-Custodial Parent

Dear (Custodial Parent),

A request was made by (name of non-custodial parent) on (date) to examine the educational records of (name of student).

(Name of non-custodial parent) has presented the school with evidence that he or she is a non-custodial parent of (name of student). Unless the school is provided with a legally binding instrument or court order providing that the parent making the request shall not have access to the child's education records, those records will be released to the parent making the request by (date which is 45th day following initial request).

FORM II

Permission to Permit Parents to Have Access to and Authorize Release of Student Records

I am a student attending (name of school) and I reached my eighteenth birthday on (date). As long as I continue to attend school, I authorize (name of parent or parents) to exercise all the rights defined in the regulation governing Student Records: Access and Disclosure.

All information released to (name of parent or parents) should be considered to have been released to me.

FORM III

Notice of Consent of Non-Custodial Parent to Release of Records

Dear (Custodial Parent),

A request was made by (name of non-custodial parent) on (date) to give consent for (name of third party) to examine the educational records of (name of student).

(Name of non-custodial parent) has presented the school with evidence that he or she is the non-custodial parent of (name of student). Unless you provide the school will evidence that (the non-custodial parent) does not have the authority to grant consent to permit (name of third party) to examine the educational records of (name of student), the records will be released by (date which is forty-five (45) days after receipt of request).

The only valid evidence you may produce is evidence of a binding agreement, court order or state law specifically revoking such right.

FORM IV

Acknowledgement of Receipt of Mayoral Directive #81-2

I ______________________________ have received a copy of Mayoral Directive 81-2 which defines the City of New York's computer usage and data security policy.

I understand that City computers, computer programs and computerized data are substantial City assets and that their use must be only for official City work. Further, I understand that any rights that I may have to use these assets will cease upon my leaving City service, whether by resignation or adverse termination procedure, and that failure to comply with Directive 81-2 will be cause for disciplinary or criminal actions to be initiated against me.

BOARD OF EDUCATION OF THE CITY OF NEW YORK
DIVISION OF HIGH SCHOOLS
110 Livingston Street
Brooklyn, New York 11201

July 31, 1986

HIGH SCHOOL MEMORANDUM # 2

RE: ALTERNATIVE INSTRUCTION FOR STUDENTS OF COMPULSORY SCHOOL AGE SUSPENDED BY THE SUPERINTENDENT

TO: HIGH SCHOOL SUPERINTENDENTS
HIGH SCHOOL PRINCIPALS
PRINCIPALS OF ALTERNATIVE HIGH SCHOOLS

FROM: SYLVIA BALLATT Sylvia Ballatt
Executive Director

Ladies and Gentlemen:

In order to provide for continued instruction of students of compulsory school age (under 17) who have been suspended by the Superintendent, alternative instruction will be offered at the Outreach sites indicated below. Every suspended student shall be assigned immediately to an alternative instruction site except in those cases where the seriousness of the charges against the student lead the Superintendent to conclude that the suspended student's continued presence in a school building presents a grave danger to students and/or staff. In such situations the Superintendent may defer the student's assignment to an alternative instruction site, and shall forward a statement of reasons for the deferment to the Executive Director of the Division of High Schools.

ALTERNATIVE INSTRUCTION SITES:

Bedford Stuyvesant Outreach Center
832 Marcy Avenue - Room 320
Brooklyn, New York 11216

Bronx Outreach
1001 Jennings Street - Room 502
Bronx, New York

Upper Manhattan Outreach
140 West 102nd Street - Room 406A
New York, New York 10025

Queens Outreach
136-11 35th Avenue - Room 202
Flushing, New York

Offsite Educational Services
OES/St. George H.S. Ctr.
25 Hyatt Street - 3rd Floor
Staten Island, New York 10301

PROCEDURES

- The Review Office will advise the school of the approval of the suspension and of the alternative instruction site.
- The school will immediately contact the parent by telephone and letter to advise him/her of the suspension and of the requirement that the student report to the designated site for alternative instruction.
- At the same time a special letter (attached) informing the parent of the suspension and of the site to which the student is to report for alternative instruction will be given to the student by the principal of the sending school. A copy of the letter will also be mailed to the parent on the same day by the school and the Review Office as part of the official suspension notification packet.

- Before the end of each school day the Review Office will contact each alternative instruction site to indicate the name, date of birth, school and official class of each suspended student scheduled to report to the site.

- During the period of suspension, the student will report to the alternative instruction site designated by the Review Office. Students who must use public transportation to get to the site will be provided with tokens on a daily basis by the alternative instruction site.

- The site will maintain a card file for each student (name, date of birth, address, school, official class, name and home and business telephone numbers of parent) and will add to the file the dates on which the student attended and a brief summary of the instruction given.

- Immediately following disposition of the case, the Hearing Office will notify the alternative instruction site of the status of the suspended student. Notification is also sent to the parent, home school and receiving school.

- A student who is assigned to an alternative instruction site and who is continued on suspension from his/her regular school after the hearing on the charge(s) may not be denied alternative instruction.

- If, at the conclusion of the hearing the Superintendent determines that a student whose alternative instruction was deferred should be on continued suspension pending a COH evaluation, the Superintendent must make a new determination as to whether the student may be assigned to an alternative instruction site. If the Superintendent again concludes that the student should not be assigned to an alternative instruction site, the Superintendent must telephone the Executive Director of the Division of High Schools and request approval for the denial of alternative instruction pending the COH evaluation.

- The alternative instruction site will maintain one (1) copy of the card file for each student and will forward a copy to the sending school which will include the record of attendance and instruction.

Questions regarding this memorandum may be addressed to Lawrence Edwards at (718) 596-8647/8927.

SB:db
attachment

ATTACHMENT TO HIGH SCHOOL MEMORANDUM #
(LETTER TO BE DUPLICATED ON SCHOOL STATIONERY AND SIGNED BY PRINCIPAL)

Dear ______________________,
(Parent/Guardian)

You will receive a letter from the Superintendent of ____________ High Schools officially notifying you that your child ______________, has been suspended from school effective ________________. Please appear with your child at a hearing which has been scheduled for ____________ at ______. The superintendent's letter will specify
(date) (time)
the allegations of misbehavior.

At 9:00 a.m. beginning ______________ and continuing until the case has been heard and a decision rendered by the Superintendent, he/she is to report, for alternative instruction, to the site checked below.

SITE	TRANSPORTATION
Bedford Stuyvesant Outreach Center 832 Marcy Avenue - Room 320 Brooklyn, New York 11216	A Train to Nostrand Avenue
Bronx Outreach 1001 Jennings Street - Room 502 Bronx, New York 10459	#2 or #5 Train to Freedman Street #6 Train to Whitlock Avenue
Upper Manhattan Outreach 140 West 102nd Street - Room 406A New York, New York 10025	#1 Local Train to 103rd Street
Queens Outreach 138-11 35th Avenue - Room 202 Flushing, New York	#7 Flushing Train to Main Street
Offsite Educational Services OES/St. George H.S. Ctr. 25 Hyatt Street - 3rd Floor Staten Island, New York 10301	R102 Bus to Richmond Terrace

Please note that transportation information is provided next to each site listed. If your child must use public transportation to get to the site indicated, he/she will be provided with tokens, at the site, at the end of each school day.

Your child must bring this letter to the school on the first date he/she is to report.

Sincerely,

Principal

TO BE COMPLETED BY THE SENDING SCHOOL

Name of Sending School ______________________
Name of Student ______________________
Address of Student ______________________
Parent/Guardian's Name ______________________
Home Telephone: ______________ Business Telephone: ______________
Date of Birth __________ Grade/Official Class ______________
Most Recent Test Scores: Reading ________ Mathematics ________
Subject Classes Currently Taking: ______________ ______________
______________ ______________ ______________

BOARD OF EDUCATION OF THE CITY OF NEW YORK
DIVISION OF HIGH SCHOOLS
110 Livingston Street
BROOKLYN, New York 11201

July 31, 1986

HIGH SCHOOL MEMORANDUM # 4

RE: THE ROLE OF THE STAFF ADVISORS IN THE SUPERINTENDENT'S SUSPENSION PROCESS

TO: HIGH SCHOOL SUPERINTENDENTS
HIGH SCHOOL PRINCIPALS
PRINCIPALS OF ALTERNATIVE HIGH SCHOOLS

FROM: SYLVIA BALLATT
Executive Director

Ladies and Gentlemen:

In order to make certain that school staff and other school witnesses are aware of procedures and are appropriately prepared to participate in student suspension hearings, we are requesting that effective September 1986, each principal select two (2) staff members to act as staff advisors in suspension cases. The various responsibilities of the staff advisors are outlined below:

I. Pre-Suspension Responsibilities of the Staff Advisor (Please continue to refer to High School Memorandum #106 "Procedures To Be Followed In Cases Where Superintendent's Suspension May Be Indicated For General Education Students")

It will be the responsibility of the staff advisor to ensure that:

1. The appropriate person has informed the accused of the charges against him/her and has given the accused an explanation of the evidence and ample opportunity to explain - See Chancellor's Regulation A-441 II B 1
2. The appropriate person has interviewed the victim and witnesses and taken signed written statements - See Chancellor's Regulation A-412 IV E
3. Conduct suspendable at the Superintendent's level has occurred - See Chancellor's Regulation A-441 II B

4. The appropriate person has notified the Superintendent on the same day as the alleged misbehavior or within a reasonable time thereafter - See Chancellor's Regulation A-441 II B I

5. The suspension has been authorized by the Superintendent

II. Post-Suspension Pre-Hearing Responsibilities

After the suspension has been authorized, it is the responsibility of the staff advisor to ensure that:

1. The student and parent have been notified by telephone/mailgram and letter of the suspension and of their right to obtain copies of the student's records and any written statements or records pertaining to the suspension - See Chancellor's Regulation A-441 II B 6 & 7f

2. The student's receives homework assignments and is given alternative instruction, where appropriate - See Chancellor's Regulation A-441 II B 4

III. Pre-Hearing Responsibilities

It is the responsibility of the staff advisor to coordinate the presentation of the school's case in a suspension hearing, whether or not he or she participates in the hearing. This will include the following duties and responsibilities:

1. interview the victim, if applicable
2. interview all witnesses, i.e. staff, students, police officers, etc.
3. familiarize all witnesses with the hearing process
4. arrange for student witnesses to be present at the hearing through either written parental consent or subpoena, if necessary
5. arrange for all other witnesses, i.e. staff, policemen, etc. to be present, through subpoenas where necessary
6. collect and organize any evidence that will be introduced at the hearing including witness reports, lab analyses and weapons (which must be vouchered)

7. assemble and bring to the hearing three (3) complete sets of the student's records, including any records or materials pertaining to the suspension

IV. Hearing Responsibilities

It will be the responsibility of the staff advisor to participate in the hearing process only where a suspended student is represented by an advocate or legal counsel and the school from which the student was suspended deems it advisable. This will include the following duties and responsibilities:

1. present opening statement
2. introduce evidence
3. direct and cross-examine witnesses
4. deliver closing statement

In each superintendent's office, there will be a student suspension coordinator who will provide assistance to the staff advisors in fulfilling their responsibilities and who will supply ongoing staff development.

Questions relating to this memorandum should be addressed to Lawrence Edwards (telephone: 596-8647/8927).

OFFICE OF THE CHANCELLOR

JOSEPH A. FERNANDEZ
CHANCELLOR

May 31, 1991

CHANCELLOR'S MEMORANDUM NO. 33, 1990-91

TO: COMMUNITY SCHOOL BOARD MEMBERS; ALL SUPERINTENDENTS; PRINCIPALS OF ALL DAY SCHOOLS; SBM/SDM CHAIRPERSONS, UFT CHAPTER LEADERS; UFT/CSA DISTRICT REPRESENTATIVES; PTA/PA PRESIDENTS; DISTRICT ADMINISTRATORS OF SPECIAL EDUCATION; BILINGUAL COORDINATORS; COMMUNITY SCHOOL DISTRICT PUPIL PERSONNEL DIRECTORS; AND PRESIDENTS OF HIGH SCHOOL STUDENT GOVERNMENT ORGANIZATIONS

FROM: Joseph A. Fernandez
Chancellor

SUBJECT: Student Safety and Discipline/Policy and Regulations

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On May 22, 1991, the New York City Board of Education adopted revised Citywide Standards of Conduct and Uniform Disciplinary Measures (Discipline Code). This Discipline Code, which will be implemented during the 1991-92 school year, sets standards which are applicable to all New York City public schools and is designed to ensure that teaching and learning take place in a safe environment.

In accordance with Part 100.2 of the New York State Commissioner of Education's Regulations, Community School Districts and centrally administered programs (high schools and citywide special education) must develop their own written policies on student conduct and discipline which are consistent with the Board of Education's Discipline Code and the attached Chancellor's Guidelines. All student conduct and discipline policies must include the following components:

1. a discipline code;
2. roles of students, parents and staff in implementing the policy;
3. a statement of rights and responsibilities of students;
4. procedures for maintaining public order on school property;
5. procedures in each school building to involve pupil personnel services;
6. alternative educational programs;
7. guidelines for professional staff development programs to ensure effective implementation of the policy;
8. provisions for annual review of the policy;
9. provisions for maintaining the policy in school files and making it available to the public, upon request;
10. provisions for disseminating the policy to all students, staff and parents; and
11. a statement that students' due process rights must be protected.

Each Community School District must review its existing policy on student conduct and discipline and adopt a policy which includes the components set forth in 1-11 above. The Discipline Code adopted by the Board of Education governs centrally administered programs and, therefore, such programs must develop policies which contain 2-11 above. For further information, please see attached Guidelines for the Development of Student Conduct and Discipline Policies for Community School District and Centrally Administered Programs which explain the requirements of these policies and the procedures by which they must be developed.

All student conduct and discipline policies must be prepared in consultation with students, parents, teachers, supervisors, administrators, and other school service personnel. This consultation must include employee unions and parent associations. In SBM/SDM schools, the School-Based Management/Shared Decision-Making Committee must be involved.

Each Community School Board must hold a public meeting for discussion of its student conduct and discipline policy and vote to approve the policy.

Following appropriate amendment of their discipline policies, the Division of High Schools and the Division of Special Education-Citywide Programs must submit these policies for the Chancellor's review and final approval no later than September 30, 1991. Following adoption at a public meeting, each Community School District must submit its policy to the Chancellor for review and final approval no later than October 15, 1991. Please submit these policies to:

Division of Instruction and Professional Development
Yvette Jackson, Executive Director
131 Livingston Street, Room 401
Brooklyn, New York 11201

Commissioner's Regulations also require distribution and publication of discipline codes. Accordingly, in centrally administered programs, the Board of Education's Discipline Code must be disseminated to and discussed with students and staff during the first week of the school year. The Code must also be distributed to parents during the first week of the school year. The Division of High Schools and Division of Special Education-Citywide Programs must submit written verification to the Chancellor by September 30, 1991 that this distribution and discussion has taken place.

For Community School Districts, following the Chancellor's approval of student conduct and discipline policies, each Community School District must disseminate and discuss its discipline code with students and staff by October 30, 1991. The code must also be distributed to parents by that date. All student conduct and discipline policies must be implemented by October 31, 1991. Each Community School District must submit written verification to the Chancellor by November 8, 1991 that distribution and discussion of its discipline code has taken place.

In addition to the Discipline Code and Chancellor's Guidelines, attached are copies of revised Chancellor's Regulations A-440, Suspension of Other Than Special Education Students in Elementary, Intermediate and Junior High Schools and A-441, Suspension of Other Than Special Education High

School Students. Please be advised that the Discipline Code and Regulation A-441 are effective beginning the 1991-92 school year. District discipline codes and Regulation A-440 will be effective on October 31, 1991 and will govern all suspensions that take place thereafter.

Questions related to this memorandum should be directed as follows:

1. Community School Districts:

   Diana Brown at (718) 935-3050

   Priscilla Chavez Reilly at (718) 935-4121 (for guidance, prevention and intervention issues)

2. High Schools:

   Lawrence Edwards at (718) 935-3415 or

   Grace Costello at (718) 935-3650

3. Citywide Special Education:

   Miriam Klein at (212) 779-7200

JAF/tg
Attachments:
Guidelines for the Development of Student Conduct and Discipline Policies
BOE Resolution Amending Discipline Code
Chancellor's Regulation A-410
Chancellor's Regulation A-440
Chancellor's Regulation A-441

c: Members of the Board of Education
Deputy Chancellors
Chief Executives
Executive Directors
L. Becker
J. Vlasto
L. Savage

OFFICE OF THE CHANCELLOR

JOSEPH A. FERNANDEZ
CHANCELLOR

May 31, 1991

GUIDELINES FOR THE DEVELOPMENT OF STUDENT CONDUCT AND DISCIPLINE POLICIES FOR COMMUNITY SCHOOL DISTRICTS AND CENTRALLY ADMINISTERED PROGRAMS

(These Guidelines supercede previously issued Guidelines)

I INTRODUCTION

All students must learn in a safe and healthy educational environment, understand what is acceptable behavior and what penalties and/or intervention measures they may expect for prohibited behavior. All educators are responsible for nuturing the skills students will need to succeed in school, and as adults in a democratic society, including the social skills that will allow them to live productively with others.

Part 100 of the Regulations of the New York State Commissioner of Education requires each community school district and centrally operated program to develop a written policy on student conduct and discipline. The Regulation also requires that certain components be included in each policy, one of which is a discipline code which sets forth prohibited student behavior and the range of penalities which may be imposed for engaging in such behavior.

In accordance with the aforementioned Regulation, on May 21, 1986, the Board of Education adopted the Board of Education Citywide Standards of Conduct and Uniform Disciplinary Measures (Discipline Code). Thereafter, each community school district and centrally-administered program was required to and did adopt a written policy on student conduct and discipline consistent with the Board's Discipline Code and the Commissioner's Regulations.

Part 100 of the Commissioner's Regulations also provides that written policies on student conduct and discipline be reviewed annually and amended, where appropriate. Accordingly, the Board of Education and the Chancellor have periodically reviewed discipline policy in order to determine what measures are most effective in promoting a safe and productive educational environment. Toward that end, in the summer of 1990, the Chancellor assembled an Interdisciplinary Task Force on Student Safety and Discipline. In addition, the Board of Education conducted several public hearings and widespread consultation was held with teachers, supervisors, administrators, other school professionals, unions, advisory groups, community-based organizations and other professional groups.

After studying the recommendations of the Task Force and the testimony at the public hearings, the Board of Education amended its Discipline Code on May 22, 1991. ACCORDINGLY, EACH COMMUNITY SCHOOL DISTRICT AND CENTRALLY-ADMINISTERED PROGRAM MUST AMEND ITS WRITTEN POLICY ON STUDENT CONDUCT AND DISCIPLINE CONSISTENT WITH THESE AMENDMENTS AND COMMISSIONER'S REGULATIONS.

NEW YORK CITY PUBLIC SCHOOLS • 110 LIVINGSTON STREET • BROOKLYN NEW YORK 1120

The guidelines below set forth the components which each community school district's and centrally-administered program's policy on student conduct and discipline must contain. Each policy should be reviewed and amended to ensure that it complies with these requirements.

Commissioner's Regulations require that policies on student conduct and discipline be developed in consultaton with teachers, administrators, other school service professionals, students and parents. As noted previously, there has already been widespread consultation with these parties resulting in the May 22, 1991 amendment of the Board of Education Discipline Code applicable to centrally-administered programs. IN ORDER TO SUPPLEMENT THE CONSULTATION PROCESS AND PROVIDE INTERESTED PARTIES WITH ADDITIONAL OPPORTUNITIES TO COMMENT ON THE COMMUNITY SCHOOL DISTRICT'S WRITTEN PROPOSED POLICY ON STUDENT CONDUCT AND DISCIPLINE, EACH COMMUNITY SCHOOL BOARD MUST PLACE THE PROPOSED POLICY ON THE AGENDA OF AT LEAST ONE PUBLIC MEETING PRIOR TO THE PUBLIC MEETING AT WHICH THE DISTRICT'S POLICY IS ADOPTED. Staff, parents and students must be notified of such meetings.

II. POLICY REQUIREMENTS

Each written policy on student conduct and discipline must include the following components:

A) DISCIPLINE CODE

A discipline code which sets forth prohibited student conduct, the range of penalties and/or intervention measures for infractions and the roles of teachers and administrators, board members and parents in implementing the policy. Intervention measures for violation of school policies must be appropriate to the seriousness of the offense and previous discipline record of the student and incorporate the requirement of alternative instruction in accordance with law and Chancellor's Regulations.

The resolution amending the Board of Education's Discipline Code is attached. This code governs high schools and citywide special education programs. Community school districts must amend their respecitve codes consistent with the attached Board of Education Discipline Code. Key modifications to the Board of Education Discipline Code are:

- A notation that the police must be summoned when a student is believed to have committed a crime
- A notation that parents must be notified for infraction No. 10, gambling
- Rearrangement and alteration of some of the specified infractions. (For example, former infraction No. 15, Using racial, ethnic, religious or sex slurs, has been changed to No. 14, Using racial,

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ethnic, national origin, religious, gender or sexual orentation slurs.)

- An increase in the level of severity for engaging in certain behaviors.
- Inclusion of the fact that a student's age, maturity, handicapping condition and intention should be considered when deciding the level of severity for an infraction.
- Expansion of available minimum and maximum actions (dispositional options) for specified infractions to include continued suspension for a fixed period of 6 - 30 days for students in grades 4 - 12 and extended suspension for one calendar year for students in grades 9 - 12.
- The provision of alternative instruction to all suspended students, regardless of age and the requirement of community superintendent

approval for a principal's suspension of students in grades K-3. (as reflected in revised Chancellor's Regulation A-440 and/or A-441)

B) CENTRAL, DISTRICT AND SCHOOL LEVEL ROLES IN IMPLEMENTING THE POLICY

The following list of roles of teachers, administrators, parents and students in implementing the discipline policy, may be used by community school districts and centrally-administered programs in developing their policies:

BOARD OF EDUCATION MEMBERS:

- to adopt all student conduct and discipline policies for the city school district

COMMUNITY SCHOOL DISTRICT BOARD MEMBERS:

- to adopt a policy on student conduct and discipline for their respective community district schools
- to annuallly review and adopt revisions, as appropriate, to the policy on student conduct and discipline.

CHANCELLOR AND SUPERINTENDENTS:

- to develop a discipline code in accordance with Part 100 of the Commissioner's Regulation and the New York City Board of Education's Citywide Policy on Student Conduct and Discipline
- to conduct public forums to allow parents, students, staff and community to have input in the development of the discipline code

- to enforce the discipline code
- to ensure that the code is annually reviewed and revised, as appropriate

SUPERVISORS AND ADMINISTRATORS:

- to work with teachers, parents and students in the development of a discipline code
- to enforce the discipline code
- to ensure that all staff, parents and students are thoroughly familiar with the discipline code
- to ensure that school rules and regulations which are developed in cooperation with teachers, parents, and students support the discipline code. These school rules and regulations should be in writing and disseminated to all students, parents and staff.
- to review the code annually and recommend necessary changes to make it more responsive to school needs
- to ensure that students develop a sense of responsibility

TEACHERS

- to work with supervisors and administrators, parents and students in the development of a discipline code
- to be involved in the development of school regulations
- to ensure that their students are throughly familiar with the applicable discipline code
- to develop a set of classroom routines which support school rules and regulations
- to work closely with pupil personnel and other support staff to help students exhibiting disruptive behavior
- to involve their students, beginning with the earliest grades, in developing class rules to enable them to have a sense of responsibility for their own behavior
- to enforce the discipline code, including referring students to appropriate guidance services.
- to work with students to help them develop a sense of social responsibility

- to keep parents informed of the behavior of their children

PARENT ASSOCIATIONS

- to work with teachers, supervisors and administrators and students in the development of a discipline code
- to communicate the code to other parents
- to support the school in the implementation of the code
- to ensure that parents within each school annually review the discipline code in relationship to their school and suggest necessary changes

PARENTS

- to work with teachers, supervisors and administrators, students and the Parent Associations in the development of a discipline code
- to support the school in the implementation of the code

STUDENTS

- to work with supervisors and administrators, teachers and parents in the development of the discipline code
- to be aware of and comply with the Discipline Code and Student Rights and Responsibilities

C) STUDENT RIGHTS AND RESPONSIBILITIES

A statement of rights and responsibilities of students which focuses on positive student behavior and which shall be publicized and explained to all students on an annual basis.

The following is a suggested list of rights and responsibilities. It is recommended that this document be used by community school districts and centrally-administered programs as a basis for developing their respective statements of rights and responsibilities

1. Students Have The Right To An Education In An Environment Conducive To Learning

a) Students have a responsibility to attend school punctually when required to do so.

b) Students have a responsibility to be prepared for class with the appropriate materials.

c) Students have a responsibility to strive for their highest possible level of academic achievement.

d) Students have a responsibility to exert constructive peer influence.

e) Students should carry identification cards at all times, if issued by the school, and are required to produce them if requested to do so by school personnel.

f) Students must follow the school's regulation regarding entering nd leaving the classroom and the school.

g) Students have a responsibility to help to maintain and improve the school environment, respect school property and exercise due care while using school facilities (i.e., school library, cafeteria, bathrooms, auditorium, etc.)

h) Students have a responsibility to conduct themselves in such a way that they not disrupt, distract or in other ways interfere with the teaching and learning process (e.g., radios).

i) Students have the responsibility to conduct themselves so that the safety of others is not jeopardized by their acts.

j) Students have the responsibility to follow the directions and instructions of school personnel in keeping with school rules.

2. Students Have A Right To Know What Is Appropriate Behavior In The School Environment And To Be Treated Fairly

a) Students have a responsibility to read and abide by the student conduct and discipline code and any other documents which explain their rights and responsibilities as school citizens.

b) Students have a right to be treated with respect and a responsibility to respect others.

3. Students May Exercise Their Constitutional Right Of Free Speech

a) Students must recognize that freedom of speech and press do not constitute license to interfere with the orderly operation of the school.

b) Students must refrain from libel, slander, and obscenity in verbal or written form.

4. Students Have The Right To Determine Their Own Dress, Except Where Such Dress Is Dangerous, Or Interferes With The Learning And Teaching Process

a) Students must observe the basic standards of cleanliness and good grooming.

b) Students must follow dress guidelines established for activities in the school gymnasium or physical education classes, shops and other special classes (e.g., laboratories).

5. Students Have The Right To Be Represented By An Elected Student Government Where Such An Organization Has Been Established

a) Student representatives should work with school personnel, the student body, and the school community to identify areas of student responsibility to be covered by this code.

b) Student representatives have the responsibility to be knowledgable concerning school rules and procedures and for following them.

c) Student government has a responsibility to keep the student body informed in a responsible manner.

6. Students Have A Right To Participate In The Student Government Process

D) SCHOOL SAFETY

Each policy must contain strategies and procedures for maintaining and enforcing public order on school property. Attached is a copy of Chancellor's Regulation A-410, "School Safety" which governs public order on school property. This Regulation must be incorporated in each community school district's and centrally administered program's policy on student conduct and discipline.

E) INVOLVEMENT OF PUPIL PERSONNEL SERVICES

Each policy must contain the procedures in each school building for prevention, early identification and resolution of discipline problems. These procedures should involve pupil personnel services, SBM/SDM teams where applicable, supervisors, administrators, teachers, students and parents. (For students in special education these procedures should include, when appropriate, a referral to School Based Support Team/Committee on Special Education for possible modification of an Individualized Education Program.)

Procedures should include:

- Guidance intervention
- Parent involvement
- Mediation and conflict resolution
- Referrals to appropriate in school/out of school services/programs.

F) ALTERNATIVE EDUCATIONAL SUPPORT PROGRAMS

Alternative educational support programs appropriate to individual student needs. Appropriate measures for assisting students include but are not limited to:

- Involvement in a wide variety of school and extra-curricular activities

- Structured opportunities for students to develop a significant, positive relationship with at least one adult:

    advisor/advisee program
    mentoring program
    class meetings
    houses
    drop-in centers

- Teaching strategies in all curriculum areas which help develop self-awareness and positive self-esteem, decision-making, conflict resolution and problem solving skills

- Programs that offer variety and flexibility in curricula and programming which fits the distinct needs and learning styles of students

- Individual/group counseling sessions

- Family Counseling

- Adjustment of academic programs

G) PROFESSIONAL DEVELOPMENT

Each policy must include guidelines for annual staff development programs to ensure effective implementation of the policy. The following are suggested topics for inclusion in ongoing professional development activities should reflect a respect for the diverse culture and ethnic groups in our schools.

Prevention Strategies/Problem Solving Skills

. Decision Making
. Effective Communications Skills
. Constructive Disclipine
. Classroom Management for the Prevention of Disclipine Problems
. Values Education
. Citizenship Education
. Coping Skills

Prevention/Intervention Strategies

. Conflict Resolution
. Peer Mediation
. Peer Counseling

Intervention Strategies

- Case Management
- Pupil Personnel Committee
- Child Study Team
- Time Out Rooms

Due Process Rights

- Chancellor's Regulations
- Staff, Student and Parent Involvement

H) ANNUAL REVIEW OF POLICY

In the spring of each year, each community school district and centrally-administered program must review its policy on student conduct and discipline and make recommendations to the Chancellor for modifications, where appropriate. Teachers, supervisors, administrators, other school service professionals, students, parents, employee unions, and parent association reprensentatives are to be involved in the annual review.

I) FILING OF THE POLICY

Provisions for maintaining the policy in school files and making it available to the public upon request

- A copy of the applicable policy on student conduct and discipline shall be filed in each school building and must be available for review upon request.

J) PUBLICITY AND DISSEMINATION OF DISCIPLINE CODE

Provisions for publicizing and explaining the discipline code to all students on an annual basis and for disseminating the code to all parents and staff on an annual basis

- Each school is responsible for publicizing, explaining and disseminating the code.

- Upon distribution, schools should obtain signed receipts from students.

The following are suggested methods for dissemination and discussion:

Teachers and Administrators

- Distribute and discuss at faculty conferences, department conferences, grade conferences, house meetings (in high schools), and on staff development days.

Students

- Distribute and discuss in subject classes, assembly programs, advisor-advisee sessions, group guidance sessions, student leadership programs and classes, and house meetings (in high schools).
- Include the Student Discipline Code in student handbooks.
- Include an article about the Student Discipline Code in a student newspaper.

Parents

- Distribute and discuss at parent meetings/workshops.
- Notify parents by postcard that their children will be receving a Student Discipline Code to be given to them.
- Mail the code to parents.
- Include an article about the Student Discipline Code in a parent association newsletter.

K) DUE PROCESS RIGHTS

A statement that student's due process rights must be protected and that violations of these rights may result in modification of the suspension decision, and that appropriate disciplinary measures of staff may be instituted.

NOTE: Discipline policies must be translated, where necessary, for parents and students whose first language is not English.

SEP [illegible] 89

BOARD OF EDUCATION OF THE CITY OF NEW YORK
Division of High Schools
110 Livingston Street
Brooklyn, New York 11201

September 13, 1989

HIGH SCHOOL MEMORANDUM #22

RE: **HOMEWORK ASSIGNMENTS FOR STUDENTS ON SUPERINTENDENTS' SUSPENSIONS**

TO: HIGH SCHOOL SUPERINTENDENTS
HIGH SCHOOL PRINCIPALS

FROM: VICTOR HERBERT Victor Herbert
Executive Director

Ladies and Gentlemen:

The following outlines your responsibilities with respect to providing homework assignments to students who are suspended at the superintendent's level. Please refer to Chancellor's Regulation A-441, Section II (B)(4).

All suspended students, regardless of age, are to be provided with homework assignments pending their suspension hearings and the decision of the superintendent following the hearings. Assignments must be provided regardless of whether or not the student is returned to the suspending school at the end of the suspension period.

The suspending school is responsible for providing homework assignments to suspended students. The form, Assignments for Students Placed on Superintendent Suspension (Attachment A), should be used for transmittal of assignments. The form must be filled out by the student's subject teachers, mailed to the student's home and faxed to the outreach center to which the student has been assigned (if the student is under 17).

All students under the age of 17 placed on continued suspension following a superintendent's hearing are to be provided with homework assignments at the outreach centers. The form, Assignments for Students Placed on Continued Suspension (Attachment B), must be filled out by the student's subject teachers and faxed to the outreach center, upon notification from the Hearing Office that a student has been placed on continued suspension.

Thank you for your cooperation in this matter.

VH:dmh

Attachments

ATTACHMENT A

ASSIGNMENTS FOR STUDENTS PLACED ON SUPERINTENDENT SUSPENSION

Last Name: ____________________ First Name: ________________________

______________________________________ High School

Suspension Date: _________ Hearing Date: _________ Outreach: ______________

Period	Subject	Teacher	Assignment
1			
2			
3			
4			
5			
6			
7			
8			
9			

ATTACHMENT B

ASSIGNMENTS FOR STUDENTS PLACED ON CONTINUED SUSPENSION

Last Name: ____________________ First Name: ________________________

______________________________________ High School

Date of Continued Suspension: _____________

Suspension Date: _________ Hearing Date: _________ Outreach: ______________

Period	Subject	Teacher	Assignment
1			
2			
3			
4			
5			
6			
7			
8			
9			

DIVISION OF HIGH SCHOOLS
110 Livingston Street
Brooklyn, New York 11201

October , 1989

HIGH SCHOOL MEMORANDUM # 33 RE: SUSPENSION PROCEDURES 12 [illegible]

TO: HIGH SCHOOL SUPERINTENDENTS
HIGH SCHOOL PRINCIPALS
PRINCIPALS OF ALTERNATIVE HIGH SCHOOLS

FROM: VICTOR HERBERT, Victor Herbert
Executive Director

Ladies and Gentlemen:

The Chancellor and the Central Board of Education have received an increased number of Superintendents' suspension appeals. These appeals reflect the failure of schools to conduct adequate investigations and to follow proper procedures when a student is arrested, in accordance with Chancellor's Regulations A-412 and A-441.

Please be advised that, effective immediately, during the suspension hearings, school officials will routinely be asked about their compliance with required suspension and investigative procedures.

Accordingly, this is a reminder that, prior to requesting a superintendent's suspension, school officials must ensure that:

1. the accused student has been:
    a. questioned;
    b. informed of the charges against him/her;
    c. given an explanation of the evidence; and
    d. given an ample opportunity to explain his/her side of the story, if it is possible to do so;
2. whenever possible, signed written statements, detailing the nature and sequence of events, have been obtained from the parties involved and at least two witnesses.

In addition, if the student has been arrested, school officials must notify his/her parents immediately. If the parent cannot be reached, a member of the school staff must accompany the student to the precinct and remain with the student for a reasonable length of time or until the parent or guardian assumes parental responsibility. The person accompanying the student should not be the victim.

Moreover, on the same day that a superintendent's suspension has been authorized, school officials must notify the parent by either telephone or telegram.

Finally, please ensure that a school official who has knowledge of the school's investigation and compliance with all of the above-noted procedures appears at the suspension hearing to testify about these matters.

Thank you for your cooperation. If you have any questions regarding this issue, please contact Lawrence Edwards, at 935-3415.

VH:sc

ADVOCATES FOR CHILDREN
of New York, Inc.
24-16 Bridge Plaza South
Long Island City, N. Y. 11101
Tel.: (718) 729-8866
Fax: (718) 729-8931

Date: ______________

Galen D. Kirkland
Executive Director

Re: ______________

Shirley Rowe, Esq.
Chief Hearing Officer
Office of Student Suspension Hearings
New York City Board of Education
362 Schermerhorn Street, Room 218
Brooklyn, NY 11217

Re: Confirmation of Postponement

Dear Hearing Officer Rowe:

This is to confirm that my telephone conversation with ______________________ on ______________________, the suspension hearing regarding ______________________ ______________________, a student at ______________________, originally scheduled for ______________________ at ______________ a.m. was adjourned by the (school) (respondent) until ______________________ at ______________________ a.m.

Thank you for your assistance in this matter.

Sincerely,

____
Advocate/Attorney

ADVOCATES FOR CHILDREN

of New York, Inc.

24-16 Bridge Plaza South
Long Island City, N. Y. 11101

Tel.: (718) 729-8866
Fax: (718) 729-8931

Galen D. Kirkland
Executive Director

Date:_______________

Re:_______________

Shirley Rowe, Esq.
Chief Hearing Officer
Office of Student Suspension Hearings
New York City Board of Education
362 Schermerhorn Street, Room 218
Brooklyn, NY 11217

Re: Confirmation of Notice of Representation

Dear Hearing Officer Rowe:

This is to confirm my telephone conversation with ______________________ on ______________, that I will be representing ____________________, student at ______________, at his/her suspension hearing scheduled for ____________________ at ____________ a.m.

Thank you for your assistance in this matter.

Sincerely,

____
Advocate/Attorney

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DIRECTIONS TO HIGH SCHOOL DIVISION HEARING OFFICE

362 Schermerhorn Street, Room 218
Brooklyn, NY 11217

Telephone Number: (718) 935-4290
Fax Number: (718) 935-4305

Bus Route Numbers:	B25 - B38 - B41 - B52 - B67 to the corner of Third and Flatbush Avenues - cross over to 362 Schermerhorn Street
Subway Lines:	2, 3, 4, 5 to Atlantic Avenue
	D, M, Q to Atlantic and Flatbush Avenues (Long Island Railroad)
	GG, A, CC to Hoyt and Schermerhorn Streets
	N, RR, B to Pacific Street & Fourth Avenue - use 475 State Street entrance
Parking:	Municipal parking lot on Schermerhorn Street 2 private parking lots on Schermerhorn Street Brooklyn Academy of Music (BAM) parking lot at Third & Flatbush Avenues

education, physical, social and spiritual growth as an individual. Basic to this policy is the intent that children shall not suffer through unnecessary failure to attend school for any cause whatsoever. To this end it is declared to be the duty of each attendance supervisor and each attendance teacher, not inconsistent with any provision of this chapter, to provide for the school adjustment of any non-attendant child, in cooperation with school authorities, special school services and community and social agencies.

CROSS REFERENCES:

Attendance officers etc. in cities, §§ 2501 et seq., 2550 et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

52 NY Jur, Schools, Colleges, and Universities §§ 287, 404.

Annotations:

Truant or attendance officer's liability for assault and battery or false imprisonment. 62 ALR2d 1328.

Removing or discharging public officer or employee for assertion of privilege against self-incrimination as violation of his federal constitutional rights. 17 L Ed 2d 1131.

CASE NOTES

To extent that public school teachers are responsible for education, discipline and security of their charges they are, to a degree, like parents, but they do not possess all parental prerogatives. People v D. (1974) 34 NY2d 483, 358 NYS2d 403, 315 NE2d 466.

Consistent with teacher tenure and compulsory education provisions of the Education Law, school district could abolish position of attendance teacher and divide duties of that position among principals and assistant principals in the school district, while assigning preferred status to a tenure teacher, who previously held such position entitling him to reinstatement should a vacancy occur within four years in his former position or a similar one. Young v Board of Education (1974) 35 NY2d 31, 358 NYS2d 709, 315 NE2d 768.

An action by a former student against defendant board of education for false arrest and imprisonment would be dismissed where plaintiff, who when truant from an area high school was detained with other black high school students at a junior high school by the dean and two security guards after they received complaints from a group of female junior high school students that several older, black youths had demanded their jewelry in the school yard and the girls identified plaintiff and his companions as those youths, in that the dean's actions in detaining the boys and notifying the police of the incident were well within the scope of his authority pursuant to Educ Law § 3213, which authorizes the detention of any student who is unlawfully absent from instruction and plaintiff had readily admitted that he was truant, and in that there was no evidence of excessive force, prolonged detention, unreasonable search or conduct more properly befitting a police officer; additionally, defendant board of education would not be liable for the subsequent arrest and police detention of plaintiff since the police were acting independently and not at the express direction or on demand of the board. Smalls v Board of Education (1982) 114 Misc 2d 109, 450 NYS2d 987.

It would be improper for a town board to appoint a justice of the peace to the position of attendance officer. 1935 Ops Atty Gen July 11 (informal).

An appointment of an attendance officer not made from a list as required by this section is illegal. 58 St Dept 498 (1938).

Parents of a child within compulsory school age have duty to see to it that such child attends school. Parents have no right to keep such child from proper attendance at school because school district is not providing transportation. Re Conlin, — St Dept —, Dec #5926 (1934).

§ 3214. School for delinquents

1. School delinquent. A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly during such attendance, is a school delinquent.

2. Special day schools. The school authorities of any city or school district may establish schools or set apart rooms in public school buildings for the instruction of school delinquents, and fix the number of days per week and the hours per day of required attendance, which shall not be less than is required of minors attending the full time day schools.

3. Suspension of a pupil. a. The board of education, board of trustees or sole trustee, the superintendent of schools, or district superintendent of schools may suspend the following pupils from required attendance upon instruction:

(1) A pupil who is insubordinate or disorderly, or whose conduct otherwise endangers the safety, morals, health or welfare of others;

(2) A pupil whose physical or mental condition endangers the health, safety, or morals of himself or of other pupils;

b. The board of education, board of trustees, or sole trustee may adopt by-laws delegating to the principal of the district, or the principal of the school where the pupil attends, the power to suspend a pupil for a period not to exceed five school days.

c. No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf. Where a pupil has been suspended in accordance with this section by a superintendent of schools, district superintendent of schools or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where a pupil has been suspended in accordance with this section by a board of education, the board may in its discretion hear and determine the proceeding or appoint a hearing officer who shall have the same powers and duties with respect to the board that a hearing officer has with respect to a superintendent where the suspension was ordered by him. The findings and recommendations of the hearing officer conducting the proceeding shall be advisory and subject to final action by the board of education, each member of which shall before voting review the testimony and acquaint himself with the evidence in the case. The board may reject, confirm or modify the conclusions of the hearing officer.

d. In the case of a suspension by the principal pursuant to paragraph b of this subdivision, the pupil and the person in parental relation to him shall, on request, be given an opportunity for an informal conference with the principal at which the person in parental relation shall be authorized to ask questions of complaining witnesses.

e. Procedure after suspension. Where a pupil has been suspended as insubordinate or disorderly and said pupil is of compulsory attendance age, immediate steps shall be taken for his attendance upon instruction elsewhere or for supervision or detention of said pupil pursuant to the provisions of article seven of the family court act. Where a pupil has been suspended for cause, the suspension may be revoked by the board of education whenever it appears to be for the best interest of the school and the pupil to do so.

f. Whenever the term "board of education or superintendent of schools" is used in this subdivision, it shall be deemed to include community boards of education and community superintendents governing community districts in accordance with the provisions of article fifty-two-a of the education law.

4. Expense. a. The expense attending the commitment and costs of maintenance of any school delinquent shall be a charge against the city or district where he resides, if such city or district employs a superintendent of schools; otherwise it shall be a county charge.

b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under confinement. If the court shall find the person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

5. [As added, L 1979, ch 562] Involuntary transfers of pupils who have not been determined to be handicapped as defined in section forty-four hundred one of this chapter.

a. The board of education, board of trustees or sole trustee, the superintendent of schools, or district superintendent of schools may transfer a pupil who has not been determined to be handicapped as defined in section forty-four hundred one of this chapter from regular classroom instruction to an appropriate educational setting in another school upon the written recommendation of the school principal and following independent review thereof. For purposes of this section of the law, "involuntary transfer" does not include a transfer made by a school district as part of a plan to reduce racial imbalance within the schools or as a change in school attendance zones or geographical boundaries.

b. A school principal may initiate a non-requested transfer where it is believed that such a pupil would benefit from the transfer, or when the pupil would receive an adequate and appropriate education in another school program or facility.

No recommendation for pupil transfer shall be initiated by the principal until such pupil and a person in parental relation has been sent written notification of the consideration of transfer recommendation. Such notice shall set a time and place of an informal conference with the principal and shall inform such person in parental relation and such pupil of their right to be accompanied by counsel or an individual of their choice.

c. After the conference and if the principal concludes that the pupil would benefit from a transfer or that the pupil would receive an adequate and appropriate education in another school program or facility, the principal may issue a recommendation of transfer to the superintendent. Such recommendation shall include a description of behavior and/or academic problems indicative of the need for transfer; a description of alternatives explored and prior action taken to resolve the problem. A copy of that letter shall be sent to the person in parental relation and to the pupil.

d. Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent shall notify the person in parental relation and the pupil of the proposed transfer and of their right to a fair hearing as provided in paragraph c of subdivision three of this section and shall list community agencies and free legal assistance which may be of assistance.

The written notice shall include a statement that the pupil or person in parental relation has ten days to request a hearing and that the proposed transfer shall not take effect, except upon written parental consent, until the ten day period has elapsed, or, if a fair hearing is requested, until after a formal decision following the hearing is rendered, whichever is later.

Parental consent to a transfer shall not constitute a waiver of the right to a fair hearing.

5. [As added, L 1979, ch 647] Transfer of a pupil. Where a suspended pupil is to be transferred, he shall remain on the register of the original school for two school days following transmittal of his records to the school to which he is to be transferred. The receiving school shall immediately upon receiving those records transmitted by the original school, review them to insure proper placement of the pupil. Staff members who are involved in the pupil's education must be provided with pertinent records and information relating to the background and problems of the pupil before the pupil is placed in a classroom.

HISTORY:

Add, L 1947, ch 820, eff July 1, 1947, with substance transferred from § 628.
Sub 3, formerly sub 6, amd, L 1969, ch 307, L 1969, ch 784; renumbered sub 6, and amd, L 1971, ch 568; amd, L 1974, ch 919, § 15, eff Sept 1, 1974.
Sub 3, par c, amd, L 1971, ch 1149, eff July 6, 1971.
Sub 3, par c, second par add, L 1971, ch 1149, eff July 6, 1971.
Sub 3, par f, add, L 1971, ch 1149, eff July 6, 1971.
Former sub 3, repealed, L 1971, ch 568, eff June 17, 1971.
Sub 4, formerly sub 7, renumbered sub 4, L 1971, ch 568, eff June 17, 1971.
Former sub 4, repealed, L 1971, ch 568, eff June 17, 1971.
Sub 5 [first setout], add, L 1979, ch 562, § 1, eff Sept 1, 1979.
Sub 5 [second setout], add, L 1979, ch 647, § 1, eff July 11, 1979.
Former sub 5, repealed, L 1971, ch 568, eff June 17, 1971.
Former sub 6, renumbered sub 3, L 1971, ch 568, eff June 17, 1971.
Former sub 7, renumbered sub 4, L 1971, ch 568, eff June 17, 1971.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JOSEPH BOE; LUIS DOE, a minor, by his mother,
ROSA DOE; BETTY MOE, a minor, by her mother,
LAURA MOE; SAM NOE, a minor, by his father,
VINCENT NOE; ANN POE, a minor by her mother,
ANN POE, on behalf of themselves and all
other persons similarly situated,

Plaintiffs,

STIPULATION OF SETTLEMENT

80 Civ 2829 (HFW)

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK;
JOSEPH G. BARKAN, individually and as
President of the New York City Board of
Education; JAMES R. REGAN, MIGUEL O.
MARTINEZ, AMELIA ASHE, ROBERT J. CHRISTEN,
IRENE IMPELLIZZERI, MARJORIE LEWIS, individually and as members of the New York
City Public Schools; FRANK MACCHIAROLA,
individually and as Chancellor of the New
York City Public Schools; NATHAN QUINONES,
individually and as Executive Director of
the Division of High Schools; PHILLIP
GROISSER, CHARLES SCHONHAUT, LOUISE LATTY,
AARON MALOFF, JAMES BOFFMAN, individually
and as superintendents of the New York
City high schools; FRANK VIVONA, MARTIN
FALKOFF, GERALD BEIRNE, individually and
as hearing officers of the Division of
High Schools,

Defendants.

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WHEREAS, plaintiffs commenced this class action claiming, *inter alia*, that defendants' procedures concerning suspension of students from high school by superintendents denied them their rights guaranteed by the Fourteenth Amendment of the United States Constitution and by the New York State Education Law; and

WHEREAS, defendants deny all liability with respect to the facts and claims alleged or which might or could have been alleged in the complaint herein; and

WHEREAS, settlement negotiations have taken place between the parties and a settlement agreement has been reached;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, and subject to approval by the Court, that the above-entitled action and the claims raised in this action shall be settled and compromised to the extent, in the manner, and upon the terms and conditions hereinafter set forth.

1. The plaintiff class, which was conditionally certified on May 16, 1980 by order of the Hon. Whitman Knapp, shall be amended. Pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, the plaintiff class shall consist of all high school students not classified as having a handicapping condition at the time of their suspension who, since September, 1978 have been, are currently, or will be suspended by superintendents; a) without being given an explanation of the charges by the principal and an opportunity to explain their version prior to suspension; or b) without being afforded an opportunity for a due process hearing before the sixth school day following the suspension or without being readmitted to the same school program or, with the consent of the parent,* to an equivalent program by the sixth

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* Whenever in this stipulation the term "parent" is used, the term shall include the student's parent or guardian, or any person in a parental or custodial relationship to the student, or the student if he is an emancipated minor or has reached the age of majority.

school day following the suspension pending a due process hearing; or c) were given a hearing that did not comport with the mandates of the Due Process Clause of the Fourteenth Amendment of the United States Constitution or the New York Education Law or City Board of Education regulations; or d) were excluded from school and were not informed of the decision of the superintendent for more than two days following a hearing.

2. (a) Upon the entry of an order approving this stipulation, defendants shall promulgate new regulations governing the procedures for suspensions of high school students by superintendents which shall be consistent with New York Education Law §3214 and this stipulation.

(b) School changes based on a history of disruptive behavior, as recorded in a student's anecdotal record, are involuntary transfers which must be accomplished in accordance with the provisions of New York Education Law §3214(5), and regulations of the Chancellor promulgated thereunder and issued upon the entry of an order approving this stipulation.

(c) These Chancellor's regulations on suspensions and involuntary transfer may be amended and modified in conformance with state and federal law provided the regulations remain consistent with this stipulation. The Chancellor's regulations may also be modified in a manner inconsistent with this stipulation, but only in the event and in conformance with a change in state statutory provisions applicable to the suspension or involuntary transfer of high school students. Notice of any modification or amendment of the regulations based upon a change in applicable state statutory provision shall be served upon counsel for the plaintiff class and filed with the Court at least thirty days prior to the proposed change.* Upon a challenge by plaintiffs to the proposed change in regulations, the defendants shall be required to demonstrate that the proposed regulations are in conformance with a change in state statutory provision applicable to the suspension or involuntary transfer of high school students. Plaintiffs do not hereby waive their rights to challenge any amendments or modifications on any grounds, nor does any party waive its right to seek modification of this stipulation, as approved by the Court, pursuant to the Federal Rules of Civil Procedure.

3. Upon the entry of an order approving this stipulation, defendants and their employees, agents and successors shall conduct superintendent suspensions of high school students in conformity with this stipulation.

4. Principals seeking a superintendent's suspension of a student shall, prior to requesting the suspension, inform the student of the charges against him.** The principal shall give the student an explanation of the evidence and an opportunity to present his side of the story, unless it is not feasible to do so.

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* Counsel for the plaintiff class shall notify counsel for defendants and file with the Court any change in their addresses or in their status as counsel for the plaintiff class.

** The use of masculine pronouns in this stipulation shall include the feminine as well.

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5. A superintendent's suspension should be authorized on the day of the alleged misbehavior, whenever possible, or within a reasonable time of the alleged misbehavior or offense. If in school when the suspension is authorized, the student shall remain there, under supervision, until either the arrival of the parent, or until the close of the student's school day.

6. The superintendent, or in his absence, his designee, may authorize the suspension of a student only if he is provided with sufficient details of the student's alleged misbehavior, and has been assured either that the principal has conducted the preliminary investigation described in paragraph four above, or has been provided with an explanation of why _it_ was not feasible to do so.

7. Students suspended by a superintendent shall be afforded an opportunity for a hearing by the fifth school day after the suspension. If the student is not afforded such an opportunity, or if the hearing is continued or postponed at the request of an employee of the Board of Education or the hearing office, the student shall be reinstated on the sixth school day to his school program or, with the consent of the parent, he may be transferred to an equivalent instructional program pending the hearing and decision of the superintendent.

8. If the parent requests an adjournment, the student shall be afforded an opportunity for a hearing by the fifth school day after the adjournment is requested, unless the parent requests a longer period or the adjournment is granted pursuant to paragraph sixteen below. When

the parent's request for an adjournment is granted, the student's right to reinstatement pending the hearing, as provided in paragraph seven above, is waived.

9. To the extent required by state law, a suspended student shall be provided with alternate instruction, such as classwork and homework assignments, during the suspension period and shall be permitted to take any city-wide or state examinations which are administered during the suspension period for which no make-up examination is permitted by the testing authority, as well as to make up school examinations, such as finals, which may affect his academic record. An academic penalty, such as reduction of a grade, may be imposed as a disciplinary measure only if the student's misconduct is directly related to his academic performance in a particular course.

10. On the day the superintendent's suspension is authorized, all reasonable efforts shall be made to give notice of the suspension to the student's parent (for example, by telephone or telegram). In addition, written notice shall be sent to the parent on the day the superintendent's suspension is authorized.

11. Such written notice shall include:

a) the fact that the student was suspended and should not return to school during the suspension period;

b) the right, in most cases, to alternate instruction, such as classwork and homework assignments;

c) the specific reasons for the suspension;

d) the date, time, and place of the hearing;

e) the right to, and the advisability of, representation by counsel or advisor, and a list of community agencies offering free or low cost legal assistance;

f) a list of names of adult witnesses and the student complaining witnesses, if any, who may be called to testify on behalf of the school, and a statement that this list shall not be binding on the school;

g) the right of the student to question witnesses and present witnesses on his behalf and to obtain subpoenas from the hearing officer;

h) the student's right to be reinstated to his former school program or to be transferred with the consent of his parent to an equivalent instructional program on the sixth school day following the suspension if the hearing is not originally scheduled to be held within five school days, or is continued or postponed at the request of an employee of the Board of Education or hearing office;

i) a statement that the student's records, including written statements, may be introduced into evidence at the hearing; that the parent or representative* may, prior to the date of the hearing, view and obtain a copy from the school of the student's records, including the anecdotal, permanent and guidance records, and statements related to the incident which precipitated the suspension;**

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* As used in this stipulation, the term "representative" shall include, but is not limited to, attorneys, advisors, and lay advocates.

** This stipulation does not address whether the Board of Education may charge a reasonable fee for copying these records.

j) an explanation of how the anecdotal records may be used at the hearing;

k) the procedures for appealing the suspension;

l) the range of possible dispositions if the charges are upheld;

m) the right to obtain from the school a full written description of a suspended student's rights (this may consist either of a copy of the Chancellor's regulations on suspension or of some other document which contains a complete explanation of a suspended student's rights).

12. Notice of the suspension shall be sent either in English or in Spanish, as appropriate. The notice shall also contain an insert written in languages spoken by substantial numbers of people in New York City which shall call attention to the importance of the enclosed materials.

13. The suspension hearing shall be presided over by a hearing officer who shall have such authority as may be conferred by state law, including the authority to issue subpoenas and administer oaths.

14. a) The presiding hearing officer shall conduct the hearing fairly and shall not have participated in or have knowledge of the events under review. He shall refrain from acting as an advocate for the parent, the student, or school officials.

b) The hearing officer may inform the parent of the option to admit the charges but he shall not request that the parent do so. If a parent who appears for a suspension hearing chooses to admit the charges, the admission shall be made on the record. The hearing officer shall explain on the record the consequences of an admission: that a hearing is waived, that the suspension will be upheld and shall remain in the student's permanent record, and that the possible dispositions include that student will be returned to his school either immediately or after a longer period of suspension, or that the student will be transferred.

15. All parties shall be afforded a full opportunity to present such testimony and evidence as may be material and relevant to the issues involved. It shall be the burden of the school to prove by direct or circumstantial evidence the student's involvement in the incident charged. No finding that the student committed the act or acts charged shall be based on hearsay evidence exclusively.

16. (a) The school and the parent, or their representatives, shall be entitled to present witnesses and cross-examine adverse witnesses. School personnel wishing to testify on behalf of the student shall be permitted to do so.

(b) If the hearing officer subpoenas or requests on behalf of a student that a Board of Education employee attend the hearing and that employee fails to appear, the hearing officer shall determine whether the employee's presence can be obtained after a short recess. If it cannot be, the parent shall be given the opportunity to request an adjournment, which shall not exceed two days unless the student is reinstated. A request for an adjournment shall be granted, and the hearing shall not proceed, unless the hearing officer finds that the missing witness' testimony would be immaterial or irrelevant. Such a finding and the reasons therefor shall be stated on the record. Prior to requesting an adjournment, the parent shall be informed whether the student will be reinstated pending the hearing and decision of the superintendent. In exercising his discretion whether to so reinstate the student, the hearing officer shall take into account such factors, among others, as the nature of the charges against the student and the reason for the unavailability of the witness.

(c) Notwithstanding the provisions of subparagraph (b) above, if the hearing officer determines that it is not possible to obtain the witness' attendance after a two day adjournment, the hearing shall proceed as originally scheduled unless the student is reinstated or the parent requests an adjournment; in either case the hearing shall be held within two weeks. The hearing officer shall advise the parent that, in the event the suspenson is upheld, the parent will be advised in writing when and if the witness becomes available, and that the parent may have the hearing reopened and witnesses recalled. The superintendent's decision after the initial hearing, as well as the decision after a reconvened hearing, may be administratively appealed.

17. (a) A copy of the student's permanent, cumulative guidance, and anecdotal records, as well as all other written material that may be considered by the hearing officer shall be made available to the parent or representative prior to the date of the hearing. A student's records are available when copies of such records are provided upon request made by a parent or representative in person at the school.

(b) At the beginning of the hearing, the parent or representative shall be provided with a complete set of the student's records for review or comparison with records previously obtained from the school and advised that records not made available may not be offered into evidence by the school on that date. If the school requests an adjournment, and the student is returned to school as provided for in paragraph seven above, and the records are provided to the parent prior to the adjourned date, the records may be offered into evidence on the adjourned date.

(c) The student's permanent, cumulative guidance, and anecdotal records may be introduced into evidence for dispositional purposes only; for such purposes, the records may not contain material relating to the underlying incident unless such material has otherwise been admitted into evidence.

(d) Although written statements and affidavits are admissible, oral testimony on the same matter must be given greater weight unless the hearing officer determines, based on all the evidence adduced at the hearing, that the oral testimony is not entitled to such weight. If oral testimony is not given greater weight, the decision shall specify the reasons for this in the findings.

18. The hearing officer shall make a report which shall be based solely on the evidence produced at the hearing. The report shall state the reasons for the determination, indicate the evidence relied upon, and contain recommended findings of fact and a recommendation regarding disposition. The hearing officer shall submit this report to the superintendent who may adopt, modify, or reject it in whole or in part.

19. The superintendent's decision shall be based solely on the competent and substantial evidence produced at the hearing. His determination that the student engaged in conduct warranting suspension shall not be based solely upon hearsay. Decisions shall state the reasons for the determination, indicate the evidence relied upon, and contain findings of fact and a disposition.

20. A verbatim record of the hearing shall be kept by stenographic notes or tape recording. A copy of this record shall be sent to the parent upon request.*

21. The student's parent shall be notified either orally or by telegram of the superintendent's decision within two school days of the suspension hearing and the decision of the superintendent shall be effective as soon as feasible but no later than five school days after the hearing. The superintendent's decision shall be mailed to the student's parent within five school days of the hearing.

22. If the superintendent determines after the hearing that the suspension should not be upheld, he shall arrange for the student's immediate return to his school program. Any reference to the suspension and the underlying incident shall be expunged from the student's records.

23. If the superintendent determines after the hearing that the suspension should be upheld, he may:

(a) return the student to the school from which he was suspended; or,

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* This stipulation does not address whether the Board of Education may charge a reasonable fee for copying this record.

(b) transfer the student to another school; or,

(c) invoke any other lawful disposition.

24. a) If the superintendent orders the student transferred to a full-time program at another school, he shall make every reasonable effort to ensure that the student's educational program at the school to which he is transferred is coordinated with the program at the original school. To the maximum extent practicable, the transfer should result in minimum disruption of the student's education and no loss of courses or academic credit.

b) A student may not be transferred to a program which leads to a general equivalency diploma unless he is over compulsory school age, as set by State law or Board of Education bylaw, whichever sets the older age.

25. Hearing officers, high school principals, and high school superintendents shall be trained in the requirements of due process, this stipulation, the regulations of the Chancellor, bylaws of the Board of Education, applicable statutes, the available programs within the Division of High Schools, the operation of the hearing office, their roles in the suspension process, and the rights and responsibilities of students and school personnel.

26. The relief described in paragraphs 27 through 31 shall be available to class members who were suspended in any school year commencing with the 1978-1979 school year to the date of entry of an order approving this stipulation, and whose suspensions occurred under one or more of the following circumstances:

(a) The superintendent's hearing was not originally scheduled to be held within five school days after the suspension and the student was not offered a choice of reinstatement or transfer to an equivalent school program on the sixth school day until the hearing was held.

(b) The parent requested an adjournment of the hearing, the adjourned date was not within five school days of the request, and the parent did not request a longer adjournment.

(c) The school or hearing officer requested an adjournment of the hearing until more than five days after the suspension and the student was not offered a choice of reinstatement or, with the parent's consent, transfer to an equivalent school program until the hearing was held.

(d) Before being suspended the student was not told the reason for the suspension by the principal or given an opportunity to explain his version, where feasible.

(e) The student's parents are Spanish-speaking, but the letter of suspension was written entirely in English.

(f) The suspension was upheld even though no witness testified against the student at the hearing and the student did not admit any of the charges.

(g) The student was not permitted to cross-examine the school's witnesses at the hearing.

(h) In suspending the student, the superintendent transferred him to a program which led to a general equivalency diploma even though the student was under seventeen years of age.

(i) The hearing officer requested school personnel to attend the hearing on the student's behalf but these witnesses failed to appear and the hearing was held.

(j) From the time the suspension began until the student received the superintendent's decision, the student was not given classwork or homework assignments.

(k) The student's final grades were affected by the suspension because the student was not allowed to make up tests that were given during the suspension, because his absence during the suspension was used to reduce his grades, or because an academic penalty was imposed for misbehavior which was not directly related to an academic activity.

(l) The student did not receive telephone or telegram notice of the superintendent's decision within one school day after the hearing.

(m) The student requested a copy of his records from the school before the day of the hearing, but did not receive them until the day of the hearing.

(n) The presiding hearing officer had knowledge of the events under review.

(o) The hearing officer did not conduct the hearing fairly.

(p) The decision of the superintendent was not based on competent and substantial evidence introduced at the hearing.

27. Class members who are eligible for relief as defined in paragraph 26 (hereafter, eligible class members) may apply to the

Chancellor for expungement of their suspension from their school records if no appeal from the superintendent's decision was previously taken. The standard upon which an expungement may be granted shall be the same as the standard used in appeals to the Chancellor involving suspensions. The Chancellor may also, in his sole discretion, consider whether the student's subsequent behavior and academic achievement, make expungement appropriate when judged against the seriousness of the incident underlying the suspension.

28. a) Eligible class members who were transferred as a result of their suspension may apply for transfer to another school or program, including the school or program in which they were enrolled at the time of their suspension. The superintendent shall set up a guidance conference to consider this application. The conference shall be attended by a member of the school staff familiar with the student, if any, the district supervisor of guidance or other district guidance personnel, and the student and his parent and representative, if any. This conference shall not be an adversarial proceeding. The application may be granted by the superintendent because of defects in the original suspension procedure, or because transfer is appropriate in light of the student's subsequent behavior or current academic needs when judged against the seriousness of the incident underlying the original suspension.

b) A superintendent's denial of an application under sub-division a) above may be appealed in writing to the Division of High Schools within twenty days of receipt of the superintendent's decision.

Such appeal shall be submitted to the Board of Education, Division of High Schools 110 Livingston Street, Brooklyn, New York 11201.

29. a) Eligible class members who are under twenty-one years of age and who discontinued attendance in a diploma-granting high school program shall be entitled to re-admittance to that program. These eligible class members may also apply for a transfer as set forth in paragraph 28 above.

b) Eligible class members who are twenty-one years of age or older at the time that they request re-admittance shall be eligible for admission to a high school equivalency diploma program and evening high school programs.

c) Eligible class members who decide to return to school shall be given the opportunity to meet with a guidance counselor for a determination of the number of credits needed and the courses that the student must take in order to graduate and in order to set up a school schedule, including but not limited to remedial assistance.

30. Eligible class members who suffered a loss of credits in the semester of their suspension shall be given every feasible opportunity to make up the lost credits and to graduate on schedule. Such students shall:

a) be given access to relevant night or summer school programs, current eligibility rules notwithstanding;

b) be provided with necessary remedial help, if available, including remedial classes at their school and peer tutoring in preparation for competency exams;

c) be given preference in admission to courses needed for timely graduation. Students shall be allowed flexibility in scheduling their programs, including enrollment in more than one course in the same subject.

d) not be required to make up one credit of physical education, lost during the semester of the suspension, if this is the only credit which the student is lacking toward graduation.

31. Eligible class members who have graduated from high school and have had mention of their suspension expunged from their school records shall be entitled to the following relief. They may attend during time periods selected by defendants:

a) College and Career counseling at the Bronx Center for Career and Occupational Services;

b) Personal Growth Lab interview training seminar offered by the Board of Education, Office of Cooperative Education.

32. a) Defendants shall mail a notice to all students who were suspended from high school by a superintendent from September,

[illegible] until the date [illegible]

The notice shall explain that the student may be a member of the plaintiff class and may also be eligible for the relief described in paragraphs 27 through 31. The notice will be written in English and Spanish and will be mailed to each student at his last known address no later than one week from the entry of an order approving this stipulation. (A copy of the notice is attached.)

b) Enclosed with the notice will be a list in conformity with and derived from the categories set forth in paragraph 26. Students will be told that if one or more of the categories on the list fit their suspension, they are eligible to apply for the relief set forth in paragraphs 27 through 31. (A copy of the list is attached to this stipulation.) Students will be instructed to check the appropriate box for the category or categories which apply to their suspension.

c) Also enclosed with the notice will be a description of the relief described in paragraphs 27 through 31. Students will be instructed to indicate in the appropriate boxes the various remedies for which they wish to apply, and to return the checked off sheet together with the list described in subparagraph (b) above. (A copy of the descriptions is attached to this stipulation.) Students will be told to return their responses by a date no later than five weeks from the entry of an order approving this stipulation to the Board of Education, Division of High Schools, Room 820, 110 Livingston Street, Brooklyn, New York 11201.

d) No later than seven weeks from the entry of an order approving this stipulation, the Board of Education will mail to those students who return timely responses instructions regarding how to apply for the remedies checked in their responses. (A copy of these instructions is attached).

e) A copy of the notice described in subdivision 32(a) and the list described in 32(b) will be provided to any person upon request made to the Board of Education, Division of High Schools. Receipt of either the notice or the list by mail shall not be a condition of eligibility for relief under paragraphs 27 through 31.

33. No later than one month after entry of an order approving this stipulation, defendants shall inform plaintiffs' attorneys of the date when mailing the notice to the class is complete, and provide a copy of the regulations relevant to the settlement of this lawsuit.

34. It is expressly understood that this stipulation and any proceeding in connection therewith are not and shall not be deemed or construed or invoked by any person as an admission by defendants of any liability or wrongdoing with respect of any of the allegations in the complaint, nor shall it be implied to mean that defendants, or their predecessors or successors, have in any way or manner violated plaintiffs' rights as contained in the constitutions, statutes, regulations, or bylaws of the United States, the State of New York, the City of New York or the Board of Education. In no event shall this stipulation be considered or used as evidence against the defendants or their successors in any judicial or administrative proceeding, except one to enforce this stipulation or any order or judgment entered thereon, and except any interview, conference or other meeting, hearing or proceeding arising from or related to suspensions by superintendents.

35. Upon approval of this stipulation by the Court, a judgment and order shall be entered:

(a) approving this stipulation and adjudging its terms to be fair, reasonable and adequate;

(b) providing that the terms and conditions of this stipulation shall be deemed and shall be enforceable as the order and judgment of this Court;

(c) reserving jurisdiction of this Court for the purpose of passing on appropriate applications by plaintiffs for reasonable attorneys fees, costs, and disbursements;

(d) dissolving the preliminary injunction entered on the 19th day of May 1980;

(e) settling and discontinuing this action, but reserving jurisdiction of this Court to enforce the terms of this stipulation as approved by order of the Court.

Dated: New York, New York
December 10, 1982

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